

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**PLAINTIFF *ePLUS*'S OBJECTIONS TO DEFENDANT'S DEPOSITION
DESIGNATIONS AND SUMMARY OF THE DEPOSITION OF KENNETH FARBER
AND COUNTER-DESIGNATIONS**

Plaintiff *ePlus*, Inc. (“*ePlus*”), through counsel, hereby submits the following general and specific objections to Defendant Lawson Software, Inc.’s (“Defendant’s”) Deposition Designations and summary of the deposition of Kenneth Gary Farber and offers the following counter-designations:

General Objections

1. Outside the Scope. Mr. Farber was designated by *ePlus* to testify, subject to its objections, concerning information reasonably available to *ePlus* with respect to Topic Nos. 1-11, 14-17, 19-21, 22, 24-27, 29-31 and 36 of Defendant's Rule 30(b)(6) Notice, pursuant to correspondence from *ePlus*'s counsel to Defendant's counsel on Nov. 3, 2009 and from *ePlus*'s counsel to Defendant's counsel on May 11, 2010. To the extent any of the designated testimony is outside of the scope of these topics, *ePlus* objects to its use as testimony on the company's behalf.

2. Best Evidence: Counsel for Defendant repeatedly asked Mr. Farber to confirm the contents of particular documents that had been marked as exhibits. The documents speak for

themselves. In responding to counsel's questions, Mr. Farber merely confirmed that the document said what it said. Defendant must introduce into evidence the underlying documents – not testimony as to the contents of such documents. *See* Fed. R. Evid. 1002, 1004 ("To prove the content of a writing . . . the original writing . . . is required"); *see also* Fed. R. Evid. 1004 ("other evidence of the contents of a writing is admissible" only if originals are lost, destroyed, not obtainable or possessed by opponent or are "not closely related to a controlling issue").

Specific Objections

Objections to December 16, 2009 Testimony

Defendant's Designations (Dec. 16, 2009)	ePlus's Objections	ePlus's Objections to Defendant's Deposition Summary
5:5-18		
30:6-8; 30:11-12	30:6-8, 30:11-12 – 602, 701, Outside Scope	
30:14-23	30:14-23 – 602, 701, Outside Scope	
30:25 – 31:7	30:25-31:7 – 602, V (as to "e-procurement product")	
33:7-14		
76:17 – 79:10		
81:19 – 82:4		
99:14 – 100:4		
151:22 – 155:5	151:22-152:5 – V (as to "standardized form of communication") 153:7-10 – 611 (compound) 153:17-24 – 602, 701 154:24-155:1 – 602	
162:17 – 163:3	162:21-163:3 – 602	

Objections to December 17, 2009 Testimony

Defendant's Designations (Dec. 17, 2009)	ePlus's Objections	ePlus's Objections to Defendant's Deposition Summary
412:17 - 413:8	412:17-22 – 602	

Objections to May 18, 2010 Deposition Testimony

Defendant's Designations (May 18, 2010)	ePlus's Objections	ePlus's Objections to Defendant's Deposition Summary
6:7-8		
11:14-19		
11:20-23		
12:6-7; 12:12-24; 13:1-3; 13:5-20		
14:7-25		
17:8 – 18:10; 18:22-23	17:12-21 – 1002, 1004 18:6-23 – 701, 1002, 1004	
18:25 – 21:1	19:5-11 – 1002, 1004 19:16-21 – 1002, 1004 20:1-9 – 1002, 1004	
21:2-25	21:11-14 – 1002, 1004	
22:7 – 23:12	22:11-17 – 1002, 1004 23:7-12 – 1002, 1004	
25:15 – 26:23		
31:6 – 32:16; 32:19-21	31:6-10 – 701 32:5-10 – 402, 611 32:5-21 – 402, 701	Mischaracterizes Testimony (As someone not skilled in the art of the patents, Mr. Farber does not understand the patents to describe the actual code written to implement the patented technology on a computer, but he does understand that the patents include a description in the specification.)
33:20 – 34:20	34:9-20 – 1002, 1004	
34:21 – 36:19		
37:17 – 38:11	37:17-23 – 402, 1002, 1004 37:24-38:11 – 402, V (as to “fair market value”)	Mischaracterizes Testimony (Exhibit 58 notes that when ePlus

Defendant's Designations (May 18, 2010)	ePlus's Objections	ePlus's Objections to Defendant's Deposition Summary
		acquired the assets of ProcureNet, ePlus gave a fair market valuation to the patents-in-suit of \$12,000, but Mr. Farber testified that this amount was actually related to the costs of administrative processing of the patents.)
39:22-25; 40:2-4; 40:6-12	39:22-40:4 – 402, 1002, 1004, V (as to "fair market value") 40:6-12 – 402, 1002, 1004	Mischaracterizes Testimony (Exhibit 58 states that the \$12,000 amount was based on what ePlus considered to be a fair market value at that time.)
48:11 – 49:5	48:11-18 – 402, V (as to "valuation") 49:1-5 – 402, 701	Mischaracterizes Testimony (To Mr. Farber's knowledge, there is no claim by ePlus that Lawson has copied any software or taken any code from ePlus.)
49:24 – 50:2	701, 1002, 1004	
50:18 – 51:7		
51:11 – 54:17	51:20-52:3 – 402, 701 52:16-53:12 – 701, 1002, 1004 53:13-21 – 701, 1002, 1004	
56:3-7		
58:9-18	701, 1002, 1004	
63:25 – 64:11	602, 701, 1002, 1004	
66:14 – 68:11	66:14-22 – 602, V (as to "valuation") 66:23-68:11 – 602, 1002, 1004 68:6-11 – 602, 611, 1002, 1004, V (as to "valuation")	Mischaracterizes Testimony (Mr. Farber is shown Exhibit 60. Mr. Farber's understanding of this exhibit is that the exhibit showed accounting entries, possibly ePlus's initial accounting of assets acquired from ProcureNet. The exhibit lists \$12,000 for the

Defendant's Designations (May 18, 2010)	ePlus's Objections	ePlus's Objections to Defendant's Deposition Summary
68:18-22		patents-in-suit.)
69:17-20	602	
70:20-21		
73:19 – 74:6	73:22-74:6 – 402, 1002, 1004, V (as to “valuation”)	Mischaracterizes Testimony (Mr. Farber's understanding of the third page of Exhibit 62 is that it is a calculation of goodwill based on ePlus's projections and supports what is shown in Exhibit 58.)
76:19 – 77:3		
77:11 – 78:1		Mischaracterizes Testimony (ProcureNet's 2000 initial public offering application was filed, but no public offering was ever made for ProcureNet.)
78:2 – 79:23	78:14-17 – 1002, 1004 78:18-79:1 – 602 79:8-23 – 602	
79:24 – 80:5; 80:21 – 81:8; 81:23 – 82:3	81:23-82:3 – 1002, 1004	
82:4-10; 82:20 – 85:15	82:7-10 – 1002, 1004 82:20-23 – 402, 602 82:24-85:10 – 402, 602, 1002, 1004	
86:15-23		
96:23 – 97:1		
97:8 -14; 97:19 – 98:11	97:11-14 – 1002, 1004 97:19-98:2 – 602, 1002, 1004	
102:14 – 103:13	102:17-25 – 1002, 1004 103:1-13 – 701, 1002, 1004	
105:19 – 106:6	402, 1002, 1004	
106:07 – 107:3; 108:6-21	106:7-107:3 – 402 108:16-21 – 402, 701, 1002, 1004	
156:19-22; 157:2-4; 157:20-24; 158:1-2; 159:13-18; 161:7-11	156:19-22 – 402, 602, 701, Outside Scope, V (as to “similar”)	Mischaracterizes Testimony (Mr. Farber's belief is that SAP has

Defendant's Designations (May 18, 2010)	ePlus's Objections	ePlus's Objections to Defendant's Deposition Summary
	157:20-158:2 – 402, 602, 701, Outside Scope 159:13-18 – 402, 602, 701, Outside Scope, V (as to “similar”) 161:7-11 – 701, 1002, 1004	continued to sell products similar to the products at issue in ePlus's suit against SAP and ePlus's license agreement with SAP. ePlus's license agreement with SAP does not require SAP to mark the patent numbers on its products.)
162:19 – 163:7	163:5-7 – 1002, 1004	
173:18-22	402	

ePlus's Counter-Designations (December 16, 2009 Testimony)

ePlus's Counter-Designations (Dec. 16, 2009)
12:10-15
16:8-13
16:17-24
18:7-14
31:25-32:11
34:19-21
34:25-35:15
35:20-36:9
37:2-6
37:23-38:9
38:13-25
39:7-11
48:16-18
51:11-17
52:21-23
53:24-54:4
66:22-67:2
67:9-13
91:6-13
98:21-24
100:15-102:17
103:2-5
103:9-104:7
104:11-105:5
105:6-13
105:17-23

<i>ePlus's Counter-Designations (Dec. 16, 2009)</i>
112:3-20
112:25-113:10
114:3-18
115:21-25
116:18-117:5
130:22-131:11
132:6-22
132:25-133:22
142:5-7
142:12-143:15
145:6-18
169:3-15
170:17-171:2
171:24-175:10

ePlus's Counter-Designations (December 17, 2009 Testimony)

<i>ePlus's Counter-Designations (Dec. 17, 2009)</i>
207:24-208:2
208:6-12
208:15-17
208:25-209:18
210:1-5
211:12-17
272:12-16
307:8-11, 15-17
307:19-23
309:3-4, 7-18
318:20-25
398:18-21
401:19-404:1

ePlus's Counter-Designations (May 18, 2010 Testimony)

<i>ePlus's Counter-Designations (May 18, 2010)</i>
11:24-12:5
41:6-24
42:10-43:17
51:8-10
54:18-55:9, 12-22
56:22-23
68:23-69:16

<i>ePlus's Counter-Designations (May 18, 2010)</i>
77:4-6
93:11-94:1
94:10-19
156: 25
160:6-18
160:23-161:5
162:2-18

Dated: August 9, 2010

Respectfully submitted,

/s/

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Summary of Counter-Designations for Ken Farber – Day 1

Since 2001, and up until the time the spend analytics category was added, the four product categories in Mr. Farber's division were e-Procurement, content and catalog management, asset management, and document management. (12:10-15; 16:8-13) Mr. Farber considers Lawson Software to be *ePlus*'s competitor in the procurement and catalog/content management categories. (16:17-24) Mr. Farber views Lawson as a top four competitor in both procurement and catalog/content management. (18:7-14)

Nothing was done in 2004 to investigate whether Lawson's products specifically came within any of the patents-in-suit because *ePlus* had its hands full with other litigation and other investigations it was doing at the time – *ePlus* is a small company with limited resources and financial capability. (31:25-32:11) The decision to sue Lawson was made in February/March 2009. The ultimate decision was made at the board level, and it was based on information that Mr. Farber had supplied to the board concerning competition that *ePlus* was facing in sales situations, which included Lawson, Perfect Commerce, SciQuest, and Verian Technologies. (34:19-21; 34:25-15; 35:20-36:9; 37:2-6) With respect to Lawson in particular, *ePlus* had directly competed against Lawson for business from Gannett, Indalex, Novant, Cleveland Clinic, BlueCross/BlueShield of North Carolina, Hanes Brands, Wolters Kluwer, and XM Radio. (37:23-38:9; 39:13-25; 39:7-11) *ePlus* considered Lawson a competitor in both 2005, 2006, 2007, and 2008. (66:22-67:2; 67:9-13; 91:6-13)

SAP, Ariba, Perfect Commerce, and SciQuest are licensees of *ePlus*'s patents. (48:16-18, 51:11-17; 52:21-23; 54:2-4) Mr. Farber was involved in negotiating all of these licenses. (53:24-54:1)

At times, *ePlus* cites the patents-in-suit in marketing materials to customers as a differentiator. *ePlus* also marks its marketing materials with the patent numbers. (98:21-24) *ePlus* marks the patent numbers on the splash screens of the procurement and content products a user sees when he enters the system. (116:18-117:5)

Mr. Farber believes that Lawson was aware of the patents-in-suit before the suit was filed. The basis of such belief is the very much publicized litigation between Ariba and *ePlus*, which was in almost every trade magazine in *ePlus*'s industry. It also received significant coverage on the web by blogs and analysts. Mr. Farber thinks that someone would have to have been hiding under a shell to be ignorant of what was going on. (100:15-102:17; 103:2-20) Mr. Farber was also aware of publicity of other patent litigation involving electronic commerce patents between Ariba and Emptoris. (103:22-104:7; 104:11-17) When Mr. Farber heard about this litigation, he took steps to investigate, which included looking at the patents that were involved in that litigation, and concluded that those patents were not relevant to *ePlus*'s business. (103:18-105:1; 105:6-13; 105:17-23)

ePlus has taken steps to monitor whether its licensees mark their products with the patent numbers of the patents-in-suit by having legal counsel involved. Counsel has sent letters to *ePlus*'s licensees concerning their marking obligations, if any. (112:3-20; 112:25-113:10; 113:3-18; 115:21-25)

In *ePlus*'s Catalog+ system, the system uses one physical database with logical catalogs within it. From the user's standpoint, it is one physical environment. Within Catalog+, the end-user may restrict his search to particular suppliers or vendors . Pictures of products are included in the database if the pictures are available from the suppliers. (130:22-131:11; 131:16-18)

In the Catalog+ and Procure+ products, there is a commodity code structure that can be adopted to categorize products. The logical catalogs in the database may be populated by the supplier, but whether this happens varies by customer. If the supplier does not populate the logical catalog, then *ePlus* may populate them. In the instance where *ePlus* populates the data in the catalog database, *ePlus* provides a service where it identifies the suppliers a customer is using, the customer notifies the supplier to expect *ePlus*'s call, and *ePlus* then contacts the supplier to get the necessary data. *ePlus* sometimes charges for this service. (130:22-131:11; 131:16-18; 132:6-8, 13-15; 132:16-22; 132:25-133:22) The catalogs are organized logically within the database as the database contains multiple suppliers and a cross-reference table. (169:3-15; 170:17-171:2; 171:24-173:1; 173:6-17; 174:14-175:10) UNSPSC codes may be used to arrange and categorize the data about each item housed in the database. (170:17-171:2)

ePlus provides Procure+ customers with a punchout option. A punchout option is the ability to go from within the application, and open up a frame whereby the user visits a third-party website using specific credentials to visit that website, and then shops with that supplier, all the while being within the Procure+ application. (142:5-7; 142:12-143:15) One punchout site may enable access to more than one supplier catalog through that website. (145:6-18)

Summary of Counter-Designations for Ken Farber – Day 2

*e*Plus and Lawson competed in the procurement space at least eight times from 2008 to 2009, and the companies for whose business they competed are Gannett, Indalex, Novant, Cleveland Clinic, BlueCross/BlueShield of North Carolina, XM Radio, Hanes, and Wolters Kluwer. (207:24-209:18) Starting in 2008, competition between *e*Plus and Lawson escalated. (210:1-5)

Forrester Research is an industry research firm that covers the procurement supply-chain contents space. (272:12-16) Aberdeen Group is similar to Forrester Research, in that it is an industry research firm and it is a competitor to Forrester. (318:20-25)

*e*Plus began marking the numbers of the patents-in-suit on its products starting in October 2003. (307:8-23) Around this time, correspondence was sent out to the appropriate groups within *e*Plus to specify how marking language that had been received from *e*Plus's outside attorneys was to be used. (309:3-18)

Ariba is a licensee of the patents-in-suit. (398:18-21) *e*Plus's litigations against Ariba and against SAP for the patents-in-suit received significant press coverage. These litigations were covered in trade magazines and industry blogs and the companies made public statements about these litigations. The jury's findings in the Ariba litigation that Ariba infringed the patents-in-suit received much publicity. Subsequent to the jury verdict, the trade magazines and analysis picked up on the fact that that case had settled. Based on Mr. Farber's experience, he believed that if someone in the electronic procurement space had not heard of *e*Plus's litigation with Ariba, they were living in a cave or under a rock. (401:19-404:1)

Summary of Counter-Designations for Ken Farber – Day 3

*e*Plus did not do a formal valuation of the assets acquired from ProcureNet as part of the acquisition process and reporting of the *e*Plus acquisition of ProcureNet assets to shareholders. (11:24-12:5; 41:6-24) *e*Plus did not undertake a third-party analysis of the value of the ProcureNet assets because the *e*Plus principals were primarily concerned with acquiring the software and liabilities of ProcureNet, and only later in the negotiations did *e*Plus become aware of ProcureNet's patents. *e*Plus's principals checked with counsel to determine how expensive it would be to transfer the patents to *e*Plus, and *e*Plus made a verbal agreement with Fisher and assessed this cost at \$12,000 to cover the cost of administration fees, which was bundled within the transfer of assets from ProcureNet to *e*Plus. (42:10-43:17)

Mr. Farber did not look at exhibit 59 in preparation for his deposition. (51:8-10)

ProcureNet may have continued, for a very short time after *e*Plus's acquisition, to use the procurement software that it had sold to *e*Plus, but it ceased using the procurement software after it was acquired by another company. (54:18-55:9, 12-22)

The last time Mr. Farber saw exhibit 57 was in the 2000/2001 timeframe. (56:22-23)
Mr. Farber did not recognize exhibit 61. (68:23-24)

*e*Plus's e-commerce business has contributed significantly to *e*Plus's overall growth as a company. The e-commerce software revenue has pretty much stayed flat as a percentage of *e*Plus's overall revenue since 2001 because *e*Plus has faced a lot of competition in the industry, and *e*Plus has had difficulties competing with the resources that it has. (93:11-94:1; 94:10-19)

Exhibit 70 is a 2006 patent license and settlement agreement between SAP and *e*Plus for a license to SAP of the patents-in-suit. (160:6-18; 160:23-161:5) The primary reason that *e*Plus did not require SAP to mark the patent numbers on its products was because SAP does not mark its products and it would not accept that provision. *e*Plus decided that it should just settle for \$17.5 million. (162:2-18)

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

1 UNITED STATES DISTRICT COURT 2 EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 ePLUS, INC.,) 5 Plaintiff,) 6 v.) No. 3:09cv620 7 LAWSON SOFTWARE, INC.,) 8 Defendant.) 9 CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER 10 Washington, D.C. 11 Wednesday, December 16, 2009 12 30(b)(6) Videotape Deposition of ePLUS, INC., by and 13 through its designee, KENNETH GARY FARBER, and in his 14 individual capacity, called for examination by 15 counsel for Defendant in the above-entitled matter, 16 the witness being duly sworn by CHERYL A. LORD, a 17 Notary Public in and for the District of Columbia, 18 taken at the offices of TROUTMAN SANDERS LLP, 401 9th 19 Street, Suite 1000, Washington, D.C., at 12:09 p.m., 20 and the proceedings being taken down by Stenotype by 21 CHERYL A. LORD, RPR, CRR. 22 23 24 25	1 C O N T E N T S 2 WITNESS EXAMINATION 3 P A G E N O . 4 KENNETH GARY FARBER 5 By Mr. McDonald 5 6 7 E X H I B I T S 8 (Exhibits attached.) 9 L A W S O N E X H I B I T N O . P A G E N O . 10 13 Amended Schedule A - Topics for 11 Depositions, Definitions 6 12 14 Transcript of the Deposition of 13 Kenneth Farber, 10-12-04, 14 EPLUS0137093-157 21 15 15 Annual Report, 2009, 16 ePLUS0528737-826 81 17 16 PO Print Formats, ePLUS0070332-38 179 18 17 Manage + Demo Request Form, 19 ePLUS0110605-606 181 20 18 Requirements for an e-Procurement 21 System, July 2002, ePLUS0002709-15 188 22 19 e-Procurement Administration Guide, 23 ePLUS0241541-90 196 24 25
1 APPEARANCES: 2 3 On behalf of Plaintiff: 4 SCOTT L. ROBERTSON, ESQUIRE 5 GOODWIN PROCTER LLP 6 901 New York Avenue, N.W. 7 Washington, D.C. 20001 8 (202) 346-4000 9 10 On behalf of Defendant: 11 DANIEL W. McDONALD, ESQ. 12 MERCHANT & GOULD 13 80 S. 8th Street, Suite 3200 14 Minneapolis, MN 55402-2215 15 (612) 332-5300 16 17 ALSO PRESENT: 18 Brian Ciccone, videographer 19 20 21 22 23 24 25	2 P R O C E E D I N G S 3 4 THE VIDEOGRAPHER: Today is Wednesday, 5 December 16th, 2009. The time is approximately 12:09 6 PM. We're at the law office of Troutman Sanders LLP 7 located in Washington, D.C. 8 This is the commencement of the video 9 deposition of ePlus Inc. pursuant to rule 30(b)(6) by 10 their designee, Kenneth G. Farber, and Kenneth G. 11 Farber personally. 12 My name is Brian Ciccone, and I am the 13 video technician. 14 Will the attorneys please note their 15 appearances for voice identification. 16 MR. McDONALD: For Lawson Software, Dan 17 McDonald, of Merchant & Gould. 18 MR. ROBERTSON: And for plaintiff, ePlus 19 Inc., Scott Robertson, of Goodwin Procter LLP. 20 THE VIDEOGRAPHER: Will the court reporter 21 please swear in the witness. 22 Whereupon, 23 KENNETH GARY FARBER 24 was called as a witness by counsel for Defendant, 25 and, having been duly sworn by the Notary Public, was

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

<p>1 examined and testified as follows:</p> <p>2</p> <p>3 EXAMINATION BY COUNSEL FOR DEFENDANT</p> <p>4 BY MR. McDONALD:</p> <p>5 Q. What is your full name?</p> <p>6 A. Kenneth G. Farber.</p> <p>7 Q. Where do you live?</p> <p>8 A. 39 Cabana Drive, Brick, New Jersey.</p> <p>9 Q. Where do you work?</p> <p>10 A. ePlus Incorporated.</p> <p>11 Q. What's your job with ePlus?</p> <p>12 A. I am the president of ePlus's systems</p> <p>13 division.</p> <p>14 Q. Do you also have a title with the parent</p> <p>15 company, ePlus Inc.?</p> <p>16 A. Yes.</p> <p>17 I think informally, it's vice president or</p> <p>18 executive vice president.</p> <p>19 Q. Do you understand that you're here today</p> <p>20 at least in part to testify on -- as the</p> <p>21 representative of ePlus Inc. as to certain topics?</p> <p>22 A. I am.</p> <p>23 Q. Have you reviewed the topics?</p> <p>24 A. I have.</p> <p>25 MR. McDONALD: Please mark this as exhibit</p>	<p>5</p> <p>1 Is that your understanding as well?</p> <p>2 MR. ROBERTSON: Can you do --</p> <p>3 MR. McDONALD: Sure.</p> <p>4 MR. ROBERTSON: -- I'm sorry -- a little</p> <p>5 slower for me. I've got stuff highlighted in here.</p> <p>6 1 through 11 I've got.</p> <p>7 MR. McDONALD: 14, 15, 16, and 17.</p> <p>8 MR. ROBERTSON: I also had 12 and 13.</p> <p>9 MR. McDONALD: Okay.</p> <p>10 MR. ROBERTSON: And then 14, 15, 16, 17,</p> <p>11 I've got that.</p> <p>12 MR. McDONALD: And then the next one I</p> <p>13 have is 22 after 17.</p> <p>14 MR. ROBERTSON: I also had 18.</p> <p>15 MR. McDONALD: Okay. And then the next</p> <p>16 one after 22 I have is 27.</p> <p>17 MR. ROBERTSON: I do not have 27. I have</p> <p>18 37 --</p> <p>19 MR. McDONALD: We don't have a 37. I've</p> <p>20 got 27 through 32 as the rest of them.</p> <p>21 MR. ROBERTSON: I've got a 37 here on page</p> <p>22 11.</p> <p>23 MR. McDONALD: Okay. Well, do you have</p> <p>24 any of categories 27 through 32?</p> <p>25 MR. ROBERTSON: No.</p>
<p>1 13.</p> <p>2 (Lawson Exhibit No. 13</p> <p>3 was marked for</p> <p>4 identification.)</p> <p>5 BY MR. McDONALD:</p> <p>6 Q. Mr. Farber, you've been handed what was</p> <p>7 marked exhibit 13.</p> <p>8 And you see on the first page, it says,</p> <p>9 amended schedule A topics for depositions?</p> <p>10 A. Yes.</p> <p>11 Q. Could you turn to page 6, please, where</p> <p>12 it's got the heading, topics.</p> <p>13 Do you have that?</p> <p>14 A. Yes.</p> <p>15 Q. Is this -- can you review this document?</p> <p>16 Is this the one that you reviewed to get</p> <p>17 an understanding of what topics you were going to</p> <p>18 testify about today?</p> <p>19 A. Yes, I believe it is.</p> <p>20 Q. All right.</p> <p>21 MR. McDONALD: And, Scott, maybe I'll</p> <p>22 just -- rather than make him try to remember all the</p> <p>23 categories, I'll just tell you: My understanding is,</p> <p>24 it's 1 through 11, 14 through 17, 22, and 27 through</p> <p>25 32.</p>	<p>6</p> <p>1 I just have 30 and 37. And if you'd like,</p> <p>2 let me just hand this to you, Dan.</p> <p>3 I've got a letter that Jennifer Albert</p> <p>4 sent to Will Schultz on November 3 identifying the</p> <p>5 topics. I don't know if you want to mark it or not,</p> <p>6 and during a break, I can look at those additional</p> <p>7 topics and see if we can designate Mr. Farber.</p> <p>8 But I don't -- you know, the ones that are</p> <p>9 on this November 3 letter that we sent you were the</p> <p>10 ones that he was -- he's been either knowledgeable or</p> <p>11 prepared to testify as to.</p> <p>12 MR. McDONALD: Yeah.</p> <p>13 I've got -- can we go off the record for a</p> <p>14 moment?</p> <p>15 THE VIDEOGRAPHER: Yeah.</p> <p>16 The time is approximately 12:14 PM. We</p> <p>17 are going off the video record. Off the record.</p> <p>18 (Discussion off the record.)</p> <p>19 THE VIDEOGRAPHER: The time is</p> <p>20 approximately 12:20 PM. We are back on the video</p> <p>21 record.</p> <p>22 BY MR. McDONALD:</p> <p>23 Q. Mr. Farber, as you know, during the break,</p> <p>24 Mr. Robertson and I kind of worked through the topics</p> <p>25 here. And rather than list them all, we're just</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

<p>1 going to take one at a time. 2 All right? 3 A. Okay. 4 Q. So if we just take it from the top here 5 with topic number 1 on page 6 of exhibit 13, we'll 6 give you a chance to read that. I'm not going to 7 read it out loud. 8 And why don't you also read number 2, 9 because I think they both relate to competition. 10 A. Okay. 11 Q. Is it your understanding that you're here 12 today as ePlus Inc.'s representative to talk about 13 categories 1 and 2? 14 A. Yes, it is. 15 Q. All right. What did you do to gather up 16 the information available to ePlus Inc. that relates 17 to these competition-related topics 1 and 2? 18 A. Well, I spoke to some folks within ePlus. 19 I referenced materials that may have been available 20 to me. I sat and I met with counsel. 21 Q. Did you talk to some people from ePlus 22 that were not counsel relating to the competition -- 23 A. Yes. 24 Q. -- involving Lawson? 25 Who did you talk to about competition?</p>	<p>9</p> <p>1 Q. What's your current involvement? 2 A. President of the ePlus systems group. 3 Q. Do you participate in sales calls? 4 A. At times? 5 Q. Do you talk to the salespeople about how 6 to make sales presentations or conduct sales efforts? 7 A. I'm involved, yes. 8 Q. For how many years have you been involved 9 in sales at ePlus? 10 A. Roughly a little over -- about 9 years, I 11 would say. 12 Q. Have you at least from time to time gone 13 on sales calls on behalf of ePlus throughout those 9 14 years? 15 A. Yes. 16 Q. Do you consider it part of your job to 17 know who ePlus's competition is? 18 A. That's one of the aspects to determine who 19 we're competing with. 20 Q. Is that important information for you so 21 that ePlus can put together a better sales or 22 marketing pitch of its own? 23 A. Yeah, at times, certainly. 24 THE VIDEOGRAPHER: Dan, can we go off the 25 record?</p> <p>11</p>
<p>1 A. I spoke to one of my sales executives, an 2 individual in marketing, and a product analyst. 3 Q. Who is the sales executive? 4 A. Will Thomas. 5 Q. Which office is he in? 6 A. Dallas, Texas. 7 Q. Who did you talk to in marketing? 8 A. Jeff Pinkerton. 9 Q. Which office is he in? 10 A. Canton, Massachusetts. 11 Q. And which product analyst did you talk to? 12 A. Robert Pelletier. 13 Q. What office is he located at? 14 A. Avon, Connecticut. 15 Q. How did you pick those 3 people to talk to 16 about competition? 17 A. Well, each of them have a function that I 18 thought would be knowledgeable about who we compete 19 with in certain circumstances. 20 Q. Have you personally been involved in sales 21 efforts at ePlus Inc.? 22 A. I have historically, yes. 23 Q. Are you currently involved in sales 24 efforts? 25 A. Yes.</p>	<p>10</p> <p>12</p> <p>1 Q. Mr. McDONALD: Off the record. 2 THE VIDEOGRAPHER: The time is 3 approximately 12:23 PM. We're going off the video 4 record. 5 (Discussion off the record.) 6 THE VIDEOGRAPHER: The time is 7 approximately 12:25 PM. We are back on the video 8 record. 9 BY MR. McDONALD: 10 Q. Mr. Farber, what product lines of ePlus 11 are current lines that you're responsible for? 12 A. Electronic procurement, content, catalog 13 management, asset management, spend analytics or 14 business intelligence application, and our document 15 management system. 16 Q. So are those considered as 5 discrete 17 product areas that you're responsible for? 18 A. Well, they're not -- I wouldn't call them 19 necessarily discrete. They're -- 20 Q. Well, what are they? 21 A. -- product line -- well, they're 22 individual products and products that also work 23 together. 24 Q. Is there a reason why they're in 5 25 different categories?</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

<p>1 A. Well, there's -- there's -- document 2 management is a separate type of a sale that's not 3 necessarily one that is enjoined with electronic 4 procurement. 5 Q. Okay. That's one of the 5. 6 But -- so is that consistent with the 7 other 5 as well, that they are products that you can 8 sell separately? 9 A. They are products that we can sell 10 separately. 11 Q. And from time to time, do you sell various 12 combinations of those 5 together to a given client as 13 well? 14 A. Yes. 15 Q. Do you have employees that have 16 responsibilities dedicated to individual ones of 17 those 5 categories? 18 A. Some are dedicated, yes. 19 Q. For example, with document management 20 systems, do you have some people dedicated just to 21 that? 22 A. Yes. 23 Q. Do you have some people dedicated just to 24 e-procurement? 25 A. Yes.</p>	<p>13</p> <p>1 years. 2 Q. Okay. So have you had 5 categories for 3 about 2 years now? 4 A. If you want to consider all 5 of those 5 categories together, yes. 6 Q. Well, whether they're together or not, I 7 mean, have you had a structure within your division 8 at ePlus that has had these 5 categories that you 9 listed for about 2 years now? 10 A. Yeah. 11 I think I answered the question. 12 Q. Okay. Well, prior to the time you had 13 these 5 categories, how many categories did you have 14 immediately prior? 15 A. 4. 16 Q. Did you have all of the ones you listed 17 except for spend analytics? 18 A. Yes. 19 Q. Was spend analytics added in about 2007? 20 A. Yeah, latter part of 2006, early 2007, I 21 believe that's correct. 22 Q. All right. So maybe closer to about 3 23 years, then, that you got the 5? 24 A. Perhaps. I'd have to check, but -- 25 Q. How long did you have the 4 categories</p>
<p>1 Q. Do you have some people dedicated just to 2 content and catalog management? 3 A. Yes. 4 Q. And did I understand right that content 5 and catalog management, that's one of the 5 6 categories? 7 A. One of the 5 categories. 8 Q. Do you have some employees dedicated to 9 asset management? 10 A. Yes. 11 Q. Do you have some employees dedicated to 12 spend analytics? 13 A. Yes. 14 Q. How long has your division operated within 15 that 5-category structure? 16 A. Well, it -- it varies by -- by product 17 line. 18 Q. I'm just talking about that structure of 19 5. I mean, if you have 4 or 6, then you don't have 5 20 anymore, so I just want to stick -- how long have you 21 had these 5 categories? 22 A. All 5 categories? 23 Again, it varies by -- by application, so 24 that we're 5 categories for -- you know, analytics as 25 an example was offered I think within the last 2</p>	<p>14</p> <p>1 other than spend analytics? 2 A. That's been in place since I joined ePlus. 3 Q. Was that 9 years ago? 4 A. Yes. 5 Q. Okay. So 2000, is that when you started? 6 A. It was actually 2001. We're coming up on 7 9 years. 8 Q. So since 2001 up until the time spend 9 analytics was added, the 4 product categories in your 10 division were e-procurement, 1, content and catalog 11 management, 2, asset management, 3, and document 12 management systems, 4; is that right? 13 A. Correct. 14 Q. Does your division at ePlus use those 4 15 categories for purposes of sales and marketing? 16 A. Yes. 17 Q. Within the 5 categories that you've 18 listed, do you consider Lawson Software to be a 19 competitor in any of those? 20 A. Yes. 21 Q. Which one or ones of the 5 do you consider 22 them to compete with ePlus in? 23 A. What I have knowledge about would be 24 procurement and catalog and content management. 25 Q. Does Lawson compete with ePlus in asset</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

1 management? 2 A. I don't know. I haven't -- I don't have 3 familiarity of Lawson in that category. 4 Q. Does Lawson compete with ePlus in spend 5 analytics? 6 A. Again, they may, but none that I've been 7 aware of in a competitive situation. 8 Q. Does Lawson compete with ePlus in document 9 management systems? 10 A. Same answer. 11 Q. Who would you consider to be your top 4 12 competitors in the procurement area today? 13 A. Well, that really depends how -- how one 14 would quantify a top competitor. It really does 15 vary. 16 Certainly, you know, I categorize them in 17 certain buckets. 18 Q. Buckets according to how significant a 19 competitor they are? 20 A. Yeah, and how -- you know, there's waves 21 in terms of how companies concentrate on their -- on 22 their portfolio and how many -- how much marketing 23 they're doing in a specific area, how many 24 salespeople they may have, how often we're seeing 25 them in a particular area.	17 19 1 that I'd classify them at that period as a top 2 competitor. 3 Q. Was PeopleSoft one of your biggest 4 competitors in late '04? 5 A. Again, they were one of the competitors in 6 the market. 7 Q. Were they one of the top competitors in 8 the market or not? 9 A. Well, I didn't label them as a top 10 competitor at that time frame that I can recall. 11 Q. Right. 12 I'm just throwing out that name. 13 A. Yeah. 14 Q. You wouldn't add them to the list of top 15 competitors. 16 You're just saying they're basically kind 17 of below that top tier? 18 A. Yeah. 19 Well, they were acquired by Oracle, 20 PeopleSoft, if that's who you're referring to. I 21 don't recall what the year was, but there are -- 22 there are a lot of procurement vendors that have come 23 and gone in the market. 24 I think I answered the question in that 25 period of time, I thought, from my recollection who
1 Q. When you say, waves, do you mean there are 2 various time frames when certain competitors are more 3 visible than others? 4 A. Yes. 5 Q. So if we take 2009 -- 6 A. M-hm. 7 Q. -- who would you view as ePlus's top 4 8 competitors in procurement? 9 A. Well, I'd say Lawson, SciQuest, SAP, 10 Perfect Commerce. 11 Q. Who do you view as your top 4 competitors 12 in the catalog and content management area? 13 A. I'd have to go with the same -- the same 14 list of vendors previously mentioned. 15 Q. If we go back about 5 years to late 2004, 16 who were your top 4 competitors in the procurement 17 area? 18 A. 2004, Ariba, SAP, Perfect Commerce, and 19 the fourth category would probably of a host of -- 20 let me see -- maybe somebody like a Ketera. 21 Q. Is that K-E-T-E-R-A? 22 A. That's correct. 23 Q. Was Oracle one of your top 4 competitors 24 in 2004? 25 A. Oracle was a competitor. I don't know	18 20 1 were the top. 2 Q. Who acquired PeopleSoft? 3 A. I believe it was Oracle. 4 Q. Is Oracle, slash, PeopleSoft still a 5 competitor in the procurement area? 6 A. They provide procurement and catalog and 7 content management applications. We see them on 8 occasion. 9 Q. Did you see them less often in 2009 than 10 you did in 2004? 11 A. I don't know if I have the data to support 12 that, as I answered for you. 13 Q. Well, do you recall giving some testimony 14 about the market for procurement products back in 15 2004? 16 A. Today or earlier? 17 Q. As you sit here today do you recall 18 doing -- giving some testimony back in 2004? 19 A. I may have. I don't recall the exact 20 testimony. 21 Q. Okay. Well, I can put the transcript in 22 front of -- let's just go ahead and do that. 23 A. M-hm. 24 MR. McDONALD: Please mark that exhibit 25 14.

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

1 the fifth -- and I'll supply the words biggest 2 competitor -- is a combination of people that come in 3 and out based on how much funding they have for that 4 day, you know, so it could be a variety of vendors 5 that, you know, nobody consistent beyond that? 6 Is that where you place Lawson in 2004? 7 A. Not necessarily. 8 Q. Where would you place Lawson in 2004 if 9 they're not in the top 4 and they're not in that 10 fifth group? 11 A. I would -- I would have to say you have 12 your top 4 and then you have many others that -- that 13 trail and follow with very slim differences in who 14 you might consider a competitor and who you may be 15 seeing more frequently than -- than others. 16 Q. So would you put Lawson in that other 17 category in 2004 or not? 18 A. I'd put them as a competitor in 2004. 19 Q. A competitor that's in a different bucket 20 from the top 4 that you listed here, though. 21 Is that fair? 22 A. Yes. 23 Q. In 2004, did you perceive that Lawson was 24 more or less competitive in certain niches such as 25 types of industries that the customer was in or	25 1 system that would be sold to customers? 2 A. Yes. 3 Q. Would you consider ePlus's product line in 4 2004 to be ERP systems or not? 5 A. It's an element of what's defined in the 6 ERP space. 7 Q. So procurement would be considered an 8 element of ERP? 9 A. One of the disciplines. 10 Q. Can you give me a couple other examples of 11 disciplines in the ERP space? 12 A. Inventory, demand forecasting. 13 Q. "Inventory" would be inventory control? 14 A. Inventory control and management and 15 demand forecasting of inventory. 16 Q. Was it your understanding that in 2004, 17 Lawson had a procurement product? 18 A. Yes. 19 Q. This was a computerized procurement system 20 product? 21 A. I don't know what your definition is of 22 computerized, but it was considered to be at the time 23 my recollection is of an electronic procurement 24 system. 25 Q. Help me understand, when you say,	27
1 geographic areas or anything like that? 2 A. I can't say for certain that I -- that I 3 had a -- data to support niches or vertical marketing 4 at that -- at that period of time. 5 Q. You had some knowledge of Lawson in the 6 procurement marketplace, though, in 2004; is that 7 right? 8 A. Yes. 9 Q. What did you know about Lawson in the 10 procurement market in 2004? 11 A. I knew that Lawson was in the procurement 12 market space, and I knew that they had other 13 applications that competed with traditional ERP 14 systems. 15 THE COURT REPORTER: "Traditionally 16 linear?" 17 THE WITNESS: ERP. 18 MR. McDONALD: ERP. 19 BY MR. McDONALD: 20 Q. Given our court reporter's reaction here, 21 maybe we should get on the record: What does ERP 22 stand for? 23 A. It's an electronic resource planning, I 24 believe is the acronym's definition. 25 Q. Is that some sort of a business computer	26 1 electronic procurement system, how would you define 2 that? 3 A. My personal definition of an electronic 4 procurement system is one that is -- facilitates the 5 purchasing -- the life cycle of purchasing through 6 computer network of systems. 7 Q. Is it your understanding that the patents 8 involved in the lawsuit with Lawson are involved with 9 electronic procurement systems? 10 A. I believe they are to the best of my 11 knowledge. 12 Q. When was the last time you looked at the 13 patents? 14 A. Last time I probably looked at the patents 15 in detail was at the last trial. 16 Q. When was the last time you looked at the 17 patents whether it was in detail or not? 18 A. I probab- -- let's see, at the -- the 19 trial I think was in 2005 or 6, and I've probably 20 looked at them as a refresher over the last several 21 months. 22 Q. How many times in 2009 have you looked at 23 the patents involved in the lawsuit with Lawson? 24 A. Perhaps once. 25 Q. And you have some prior familiarity with	28

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

<p>1 the patents; is that right?</p> <p>2 MR. ROBERTSON: Objection to the form of</p> <p>3 the question as vague and ambiguous.</p> <p>4 A. To as much as I can understand them, I</p> <p>5 have some familiarity with them.</p> <p>6 BY MR. McDONALD:</p> <p>7 Q. What is your understanding as to what the</p> <p>8 patents involved in the lawsuit cover?</p> <p>9 MR. ROBERTSON: Objection, calls for a</p> <p>10 legal conclusion.</p> <p>11 A. You know, at -- at a high level,</p> <p>12 excluding, you know, any legal definitions that</p> <p>13 are -- that are beyond my -- my comprehension,</p> <p>14 they -- they involve the process of electronic</p> <p>15 procurement.</p> <p>16 BY MR. McDONALD:</p> <p>17 Q. Do you have an understanding as to whether</p> <p>18 there are any essential pieces or elements of the</p> <p>19 patents involved in the lawsuit?</p> <p>20 MR. ROBERTSON: Same objection, calls for</p> <p>21 a legal conclusion, and arguably outside of the scope</p> <p>22 of topic 37.</p> <p>23 But go ahead and answer if you can.</p> <p>24 A. Well, I guess essentially would be based</p> <p>25 on who the recipient of the patent is and what they</p>	<p>29</p> <p>1 to whether or not Lawson's e-procurement product</p> <p>2 performed one or more of those functions you just</p> <p>3 listed?</p> <p>4 A. It would have been difficult for me to --</p> <p>5 to tell. There was no detailed analysis that I was</p> <p>6 aware of that would have matched the functionality of</p> <p>7 Lawson to the represented claims of the patent.</p> <p>8 Q. Well, whether you matched them to the</p> <p>9 claims or not, are you aware as to whether or not</p> <p>10 Lawson's e-procurement system had any of those</p> <p>11 specific functions that you just listed in 2004?</p> <p>12 A. At a -- at a high-level capability, I</p> <p>13 believe that -- my recollection is that they offered</p> <p>14 a procurement system. How detailed, what</p> <p>15 functionality was involved, I don't know at that</p> <p>16 time.</p> <p>17 Q. In 2004, ePlus did own the patents</p> <p>18 involved in the lawsuit.</p> <p>19 Right?</p> <p>20 A. Yes.</p> <p>21 Q. Did ePlus believe that enforcing those</p> <p>22 patents was important in 2004?</p> <p>23 A. Sure.</p> <p>24 I mean, I believe we did, yeah.</p> <p>25 Q. As part of that effort to enforce the</p>
<p>30</p> <p>1 may consider essential, but I understand there are a</p> <p>2 number of claims and association of functions that --</p> <p>3 that are performed or described within the claims of</p> <p>4 the patent.</p> <p>5 BY MR. McDONALD:</p> <p>6 Q. Do you have some specific understanding as</p> <p>7 to what within the electronic procurement high-level</p> <p>8 area the patents actually protect?</p> <p>9 MR. ROBERTSON: Same objection.</p> <p>10 A. Yeah.</p> <p>11 I mean, I have a high-level understanding,</p> <p>12 yes.</p> <p>13 BY MR. McDONALD:</p> <p>14 Q. Beyond just being an electronic</p> <p>15 procurement, what is your understanding, if any?</p> <p>16 MR. ROBERTSON: Same objection.</p> <p>17 A. Well, again, at a layman's terms, it is --</p> <p>18 my understanding of the -- of the patent is -- or the</p> <p>19 patents, I should say, involve the ability to -- to</p> <p>20 search multiple suppliers in a catalog, do comparison</p> <p>21 and selection of those suppliers, check inventory, do</p> <p>22 requisitioning, and be able to generate purchase</p> <p>23 orders from the requisitions to multiple suppliers.</p> <p>24 BY MR. McDONALD:</p> <p>25 Q. In 2004, did you have an understanding as</p>	<p>30</p> <p>1 32</p> <p>1 patents, was anything done in 2004 to investigate</p> <p>2 whether or not Lawson's product specifically came</p> <p>3 within any of the patents?</p> <p>4 A. No, I don't believe we did in 2004.</p> <p>5 Q. Why not?</p> <p>6 A. Well, I think we had our hands full with</p> <p>7 other litigation and other investigations that we</p> <p>8 were doing at that time. We're a small company with</p> <p>9 limited resources, limited financial capability, and</p> <p>10 as I said, we were -- we were involved in other</p> <p>11 investigations, I believe litigation at that time.</p> <p>12 Q. Do you look at the patents involved in the</p> <p>13 lawsuit as a potential way to generate income for</p> <p>14 ePlus?</p> <p>15 A. No.</p> <p>16 We don't look at it as an</p> <p>17 income-generating facility.</p> <p>18 Q. Did you give any consideration in 2004 to</p> <p>19 putting Lawson on notice that you own patents in the</p> <p>20 e-procurement area?</p> <p>21 MR. ROBERTSON: Objection, vague and</p> <p>22 ambiguous.</p> <p>23 A. I don't know individually by -- by</p> <p>24 company. We -- we followed what we thought was</p> <p>25 appropriate, what was outlined by our counsel, and</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

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<p>1 what we needed to do to provide notice to -- to third 2 parties of our patents.</p> <p>3 BY MR. McDONALD:</p> <p>4 Q. Well, I'm just asking a very specific 5 question, though.</p> <p>6 A. Okay.</p> <p>7 Q. Did you give some consideration at ePlus 8 in 2004 to specifically notifying Lawson Software 9 about the patents involved in the lawsuit today?</p> <p>10 A. I think we gave consideration of anybody 11 that we thought might be a competitor and how we 12 might handle notice to -- to competitors, but I don't 13 know that we singled out Lawson over one -- one or 14 the other at that time.</p> <p>15 Q. As you sit here today and speaking on 16 behalf of the company, are you aware of any documents 17 that would relate to whether or not ePlus 18 specifically considered whether or not it should give 19 Lawson notice of the patents in 2004?</p> <p>20 A. Not that I could recall at this time.</p> <p>21 Q. And is it true that after talking to other 22 people at the company to prepare for the deposition 23 today, there are no recollections you're aware of of 24 anybody outside of documents that would indicate 25 there was consideration given in 2004 to notify</p>	<p>1 decision?</p> <p>2 A. Well, I think ultimate decisions are at a 3 board level where we present potential findings, and 4 ultimately it's not my singular decision.</p> <p>5 Q. So the ePlus Inc. board decided to bring a 6 lawsuit; is that right?</p> <p>7 A. Well, based on the information that was 8 provided, yes.</p> <p>9 Q. Sometime before that decision, did you 10 have a role in recommending who may be infringing the 11 ePlus patents?</p> <p>12 A. I knew who we were running up against more 13 frequently, and I was responsible for identifying the 14 vendors and making the recommendation of who should 15 be investigated.</p> <p>16 Q. Did somebody ask you to do that?</p> <p>17 A. No, not that I recall.</p> <p>18 Q. That was your own decision?</p> <p>19 A. That was my decision.</p> <p>20 Q. When did you make that decision to 21 identify the vendors and start on this process that 22 led to the recommendations of who to sue?</p> <p>23 A. I thought the decision was probably made 24 around the February time frame.</p> <p>25 Q. So pretty close to the time you actually</p>

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1 Lawson about the patents?

2 MR. ROBERTSON: Object to --

3 BY MR. McDONALD:

4 Q. Is that right?

5 MR. ROBERTSON: -- the form.

6 Sorry.

7 Object to the form of the question.

8 You can answer.

9 A. Again, specifically calling out Lawson
10 versus another competitor, no.

11 BY MR. McDONALD:

12 Q. Were you involved in the decision to sue
13 Lawson?

14 A. I think I played a role in it, yes.

15 Q. What was your role?

16 A. My role was to recommend who I thought may
17 be infringing and to conduct an investigation of
18 that.

19 Q. When was the decision to sue Lawson made?

20 A. As I recall, it was around the February,
21 March 2009 time frame.

22 Q. Did you actually participate in that
23 decision to sue?

24 A. I made a recommendation.

25 Q. Did somebody else make the ultimate

1 went to the board with the recommendation?

2 A. Between the time that I -- you know, might
3 have been Jan -- December or January, and then asked
4 counsel to conduct an investigation early February.

5 Q. As part of that process, what company or
6 companies did you identify as the ones that you were
7 running up against more frequently?

8 A. At that time, it was Lawson, Perfect
9 Commerce, SciQuest, and Verian Technologies.

10 Q. How did you determine that these were the
11 4 companies that ePlus was running up against more
12 frequently?

13 MR. ROBERTSON: Let me just caution the
14 witness here -- just that you can answer the question
15 to the extent you can without revealing
16 attorney-client communications. And we're getting
17 into an area now where it might be called for, but if
18 you can determine from a business view, by all means,
19 please answer the question.

20 A. Can you repeat that for me, please.

21 BY MR. McDONALD:

22 Q. Yes.

23 I'm really not asking about I don't think
24 lawyer stuff. Let me back up a little bit and
25 clarify something.

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

<p>1 A. Sure.</p> <p>2 Q. When you say there were certain companies</p> <p>3 that you were running up against more frequently,</p> <p>4 that's in the marketplace.</p> <p>5 Right?</p> <p>6 A. That's in sales situations.</p> <p>7 Q. So it's got nothing to do with the</p> <p>8 lawyers.</p> <p>9 Right?</p> <p>10 A. I hope not.</p> <p>11 Q. On a good day.</p> <p>12 A. Yeah, exactly.</p> <p>13 Q. So how is it that you identified those</p> <p>14 companies as the ones in the marketplace that ePlus</p> <p>15 was running up against more frequently?</p> <p>16 A. Typically -- I shouldn't say</p> <p>17 "typically" -- but there are a number of situations</p> <p>18 whereby you're responding to a proposal or you're in</p> <p>19 a situation where you're trying to sell a product to</p> <p>20 a prospective buyer, and there are times that you're</p> <p>21 able to determine who your competition is.</p> <p>22 So that was used as a basis.</p> <p>23 Q. If we go back to the early 2009 time</p> <p>24 frame, then, when you were going through this process</p> <p>25 of identifying --</p>	<p>37</p> <p>1 Q. That was also a Lawson-specific</p> <p>2 competitive situation?</p> <p>3 A. Wolters and others, yes.</p> <p>4 Q. Was that in early 2009?</p> <p>5 A. I believe it was in the 2009 time frame,</p> <p>6 best of my recollection.</p> <p>7 Q. Of the companies that you listed, did</p> <p>8 ePlus wind up getting any of those customers?</p> <p>9 A. Hanes is a customer of ours.</p> <p>10 Q. Any others?</p> <p>11 A. I don't believe so.</p> <p>12 Q. Do you know which of the companies you</p> <p>13 listed are Lawson customers?</p> <p>14 A. I wish I did, but I -- it's very often</p> <p>15 when customers make a selection, they don't share it.</p> <p>16 So we either find out from a press release if</p> <p>17 there's -- one is issued.</p> <p>18 I do believe, though, that again that did</p> <p>19 share with us that they were operating Lawson</p> <p>20 procurement in one of their locations.</p> <p>21 Q. Do you have an understanding as to whether</p> <p>22 Gannett had been already operating a Lawson product</p> <p>23 for some years or whether they had just signed up</p> <p>24 with Lawson in 2009?</p> <p>25 A. My recollection is that they had a -- were</p>	<p>39</p>
<p>1 A. Yes.</p> <p>2 Q. -- who you were running up against more</p> <p>3 frequently, were there specific RFPs or prospective</p> <p>4 buyers who caused Lawson -- Lawson's name to come up</p> <p>5 as a competitor?</p> <p>6 A. There were -- there were a number of</p> <p>7 specific sales situations that had arisen, yes.</p> <p>8 Q. What specific sales situations arose</p> <p>9 specific to Lawson?</p> <p>10 A. Specific to Lawson, you're asking for the</p> <p>11 specific customers or prospects?</p> <p>12 Q. Yes.</p> <p>13 A. Okay. I think Gannett, newspaper</p> <p>14 division, that is, Indalex, Novant, Cleveland Clinic,</p> <p>15 BlueCross BlueShield North Carolina, I think XM</p> <p>16 Radio.</p> <p>17 And that was the more recent ones.</p> <p>18 Q. Was Hanes brands one of them too?</p> <p>19 A. Hanes was as I recall, a competitive</p> <p>20 situation, may have been a little earlier than 2009.</p> <p>21 Q. A competitive situation involving Lawson?</p> <p>22 A. Yes, yes.</p> <p>23 Q. How about Wolters Kluwer?</p> <p>24 A. Wolters Kluwer.</p> <p>25 Yes. Thank you.</p>	<p>38</p> <p>1 running a back office application of Lawson that I</p> <p>2 believe was nonprocurement-related for a number of</p> <p>3 years.</p> <p>4 Q. Do you have an understanding as to whether</p> <p>5 Gannett, then, bought a Lawson product specific to</p> <p>6 procurement?</p> <p>7 A. I don't know when they purchased a license</p> <p>8 to procurement.</p> <p>9 Q. Of the prospects that you listed, do you</p> <p>10 have an understanding as to whether or not Lawson was</p> <p>11 teaming up with any other companies as part of their</p> <p>12 proposal?</p> <p>13 A. No, I don't believe that I have -- they</p> <p>14 may -- I'm just trying to think -- I'd be</p> <p>15 speculating, my recollection right now. They may or</p> <p>16 may not have been.</p> <p>17 Q. Are you aware of whether or not from time</p> <p>18 to time Lawson has made any proposals in conjunction</p> <p>19 with SciQuest?</p> <p>20 A. I believe that Lawson has a relationship</p> <p>21 with SciQuest.</p> <p>22 Q. What's your understanding as to what that</p> <p>23 relationship is?</p> <p>24 A. I think the relationship revolves around</p> <p>25 at certain times partnering to utilize different</p>	<p>40</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

<p>1 aspects of each other's application.</p> <p>2 Q. Do you have an understanding as to what</p> <p>3 types of applications SciQuest markets?</p> <p>4 A. SciQuest markets both procurement and</p> <p>5 catalog management.</p> <p>6 Q. Do you have an understanding as to which</p> <p>7 aspects of SciQuest's product line are the ones used</p> <p>8 in partnership with Lawson?</p> <p>9 A. I don't have the details of that.</p> <p>10 Q. Of those companies that you listed, did</p> <p>11 anybody other than Lawson compete with ePlus for</p> <p>12 those prospects?</p> <p>13 A. Yes, I believe so.</p> <p>14 Q. Who else competed for some or all of them?</p> <p>15 A. I think SAP, Ariba. I believe Perfect</p> <p>16 Commerce may have competed on -- on a few of them. I</p> <p>17 don't know which combinations per se, you know, of</p> <p>18 those competitors on individual clients were, but I</p> <p>19 think those were the -- Verian and SciQuest may have</p> <p>20 also competed on some of those.</p> <p>21 Q. Of any of the ones you listed, were there</p> <p>22 any situations where the only companies competing</p> <p>23 were Lawson and ePlus?</p> <p>24 A. I don't necessarily have that information.</p> <p>25 Q. Is it your belief that for all of them,</p>	<p>41</p> <p>1 questions, that's the time to ask.</p> <p>2 Q. So you have to decide whether you're going</p> <p>3 to identify yourself on that phone call?</p> <p>4 A. We don't. Others may.</p> <p>5 Q. Okay. I think you indicated Gannett had a</p> <p>6 preexisting Lawson nonprocurement product.</p> <p>7 Is that your understanding?</p> <p>8 A. My -- yes, yes, that's correct.</p> <p>9 Q. Did they have somebody's procurement</p> <p>10 product at the time, Gannett?</p> <p>11 A. Ours.</p> <p>12 Q. They did have your procurement product?</p> <p>13 A. Yes.</p> <p>14 Q. Do they still have it?</p> <p>15 A. No.</p> <p>16 Q. Your understanding is that Lawson got the</p> <p>17 procurement product?</p> <p>18 A. My understanding is that I was informed</p> <p>19 that they had a license to Lawson, were running it in</p> <p>20 one or more of their locations, and were as a result</p> <p>21 of, you know, budgetary constraints and things that</p> <p>22 were going on obviously in the economy, they were</p> <p>23 looking to leverage applications that they already</p> <p>24 had in-house, and Lawson was one of those in the area</p> <p>25 of procurement.</p>	<p>43</p>
<p>1 somebody else was in the mix in terms of a</p> <p>2 competitor?</p> <p>3 A. That would be speculation on my part. I</p> <p>4 don't -- I don't have concrete proof of that.</p> <p>5 Q. What is the basis for your belief that SAP</p> <p>6 was competing for at least some of those same</p> <p>7 prospects?</p> <p>8 A. Speculation and -- well, not some</p> <p>9 speculation -- Wolters Kluwer, I believe, also had an</p> <p>10 SAP back-office system and I believe was evaluating</p> <p>11 that as well.</p> <p>12 And then it's information that I've</p> <p>13 attained through either, you know, my sales rep</p> <p>14 asking those -- those clients specifically or</p> <p>15 participating in a Q and A pre-RFP vendor call where</p> <p>16 vendors get on the phone, ask their questions about</p> <p>17 an RFP, and sometimes vendors identify themselves,</p> <p>18 sometimes they don't.</p> <p>19 Q. You say, sometimes the vendors identify</p> <p>20 themselves.</p> <p>21 This is a call involving the other</p> <p>22 vendors?</p> <p>23 A. Yeah.</p> <p>24 Typically what happens in an RFP is, the</p> <p>25 client will have a conference call, and if there's</p>	<p>42</p> <p>1 Q. What product or products of ePlus did</p> <p>2 Gannett have that they no longer use?</p> <p>3 A. Procurement and content management.</p> <p>4 Q. Is that the products that go by the name</p> <p>5 procure plus and content plus?</p> <p>6 A. Yes, catalog plus.</p> <p>7 Q. Is that a third one, or is that -- it's</p> <p>8 now content?</p> <p>9 A. It's the catalog component of the</p> <p>10 procurement engine.</p> <p>11 Q. Okay. So maybe I better take it from the</p> <p>12 top.</p> <p>13 Which of your products did Gannett have?</p> <p>14 A. Our procurement system.</p> <p>15 Q. What was the brand name of that?</p> <p>16 A. Procure plus.</p> <p>17 And our content management component they</p> <p>18 licensed called catalog plus.</p> <p>19 Q. And they're not using either one of those</p> <p>20 anymore?</p> <p>21 A. No, they're not.</p> <p>22 Q. Did they tell you why they decided not to</p> <p>23 use your product anymore?</p> <p>24 A. Well, they told us that, you know, there</p> <p>25 were budgetary constraints within the corporation and</p>	<p>44</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

1 that they were looking inside to leverage other 2 technologies, and they were looking at Lawson because 3 they knew they had a license to it. 4 And it was successfully being run in 5 another area of the company, and our maintenance 6 was -- and license was -- was canceled at that point. 7 Q. So basically -- well, did I understand you 8 right that they had a preexisting nonprocurement 9 Lawson product, or did they have something with some 10 procurement capabilities from Lawson? 11 A. They -- they had a nonprocurement system 12 in place that I was aware of when they licensed our 13 technology, our procurement and catalog systems. 14 When they licensed Lawson's procurement, whether it 15 was -- whether they had it on their shelf as part of 16 the original license, I don't know. I have no 17 knowledge of when that transpired. 18 Q. Is it your understanding that the ePlus 19 procurement in catalog plus products interacted with 20 the Lawson back-office system at Gannett? 21 A. I don't recall the specific integration 22 that may have been done to the Lawson system. 23 Typically our clients have us integrate with their 24 accounting systems, so it may have been done. I'd 25 have to go back and refresh my memory on the	45 47 1 Lawson got any of the contracts for any of the other 2 companies you listed other than Gannett and Indalex? 3 A. Clients did not share that information 4 with us. 5 Q. Did Indalex already have some -- some 6 other software, business software vendor that it was 7 working with before it put out a proposal? 8 A. They may have. I don't -- I don't recall. 9 There could have been. 10 Q. Did Novant have any preexisting system, 11 commerce-related system that it had before it put out 12 bids? 13 A. It also may have. 14 Q. Do you have some recollection one way or 15 the other about Novant? 16 A. No. 17 Q. Did Cleveland Clinic have a preexisting 18 system from anybody? 19 A. Again, not that I can recall. 20 Q. Do you recall whether or not Cleveland 21 Clinic was seeking any specific functionality 22 involving catalogs? 23 A. Well, I think that their main interest at 24 the catalog level was -- was health care-related. 25 Q. Do you have an understanding that when
46 1 agreement. 2 Q. With respect to Indalex, do you know who 3 got their business? 4 A. No. 5 Q. Do you have an understanding that Lawson 6 was specifically competing for that business? 7 A. Yes. 8 Q. Who else do you know of was specifically 9 competing for Indalex? 10 A. As I said before, I don't recall the 11 combinations of vendors per each client, so -- 12 Q. I'd just like to go through them one at a 13 time, though. 14 Tell me which ones you may know for each 15 individual one. 16 A. I think my answer might be the same 17 though. 18 Q. Okay. So for any of those, you're not 19 aware of any -- except for Wolters Kluwer, I think 20 you said they had a SAP system? 21 A. Yes. 22 And the other one might be -- in addition 23 to Lawson at Cleveland Clinic, I believe SciQuest was 24 also part of that. 25 Q. Other than Gannett, do you know whether	46 48 1 they sent out a request for proposal in the early 2 2009, maybe late 2008 time frame, that they were 3 specifically seeking to add a catalog component to 4 their existing procurement system? 5 A. Our proposal to them ended up being just a 6 catalog system, having not had -- not being able to 7 participate on the procurement side of the house. 8 Q. Were they also bidding out a procurement 9 request? 10 A. I think they were evaluating conversations 11 that they had with us procurement systems, and we 12 were hoping to be part of that. 13 Q. Did they have a preexisting procurement 14 system? 15 A. They may have. 16 Q. SAP and Ariba are both licensees of ePlus. 17 Correct? 18 A. Licensees as it relates to the patents. 19 Q. Yes. 20 A. Yes. 21 Q. If a prospect decides to use SAP or Ariba 22 for catalog or content management, you wouldn't 23 consider that to infringe your patents. 24 Right? 25 MR. ROBERTSON: Objection, calls for a

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

<p>1 legal conclusion.</p> <p>2 A. There's -- there's a number of legal</p> <p>3 elements within the agreements that I have some</p> <p>4 familiarity with, others that I don't, but my</p> <p>5 understanding is that if a prospect is licensed to</p> <p>6 let's just say the SAP system as an example -- if</p> <p>7 it's the SAP standalone system that's offered to</p> <p>8 them, I believe the license extends to those</p> <p>9 customers.</p> <p>10 BY MR. McDONALD:</p> <p>11 Q. What do you mean by, SAP standalone</p> <p>12 system?</p> <p>13 A. My recollection is that there were certain</p> <p>14 exclusions, so if it was SAP-developed code or</p> <p>15 -developed application, then their customers would be</p> <p>16 licensed, whereas if in certain situations there were</p> <p>17 other catalog providers that were not basing their</p> <p>18 solutions on SAP code, the license wouldn't</p> <p>19 automatically be extended to those.</p> <p>20 Q. So the distinction would be who wrote the</p> <p>21 code for the catalog services?</p> <p>22 MR. ROBERTSON: Same objection.</p> <p>23 A. I think that's one example. I'd have to</p> <p>24 go back to the agreement to in my nonlegal view of</p> <p>25 things, you know, at a business level, break it down.</p>	<p>49</p> <p>1 Q. Well, if a customer or a prospect elects</p> <p>2 to use an Ariba catalog management system, would you</p> <p>3 consider that to be an event that does not infringe</p> <p>4 any of your patents because of Ariba's license?</p> <p>5 MR. ROBERTSON: Objection, calls for a</p> <p>6 legal conclusion.</p> <p>7 A. Yeah.</p> <p>8 I wouldn't know. That would have to be</p> <p>9 investigated. I'd have to --</p> <p>10 BY MR. McDONALD:</p> <p>11 Q. Well, Ariba paid for the license.</p> <p>12 Right?</p> <p>13 A. They paid for a certain level of</p> <p>14 distribution and restrictions around the license, but</p> <p>15 there's some legal aspects around the license in</p> <p>16 terms of how they can interact with extending that</p> <p>17 license to -- to other parties of the Ariba system.</p> <p>18 Q. So your understanding, are there some</p> <p>19 limits on -- on the license for Ariba?</p> <p>20 A. As I recall, yes.</p> <p>21 Q. What is your understanding -- I understand</p> <p>22 you're not a lawyer -- but what's your understanding</p> <p>23 from a business standpoint as to what those limits</p> <p>24 are?</p> <p>25 A. Okay. Well, as you know, I'm not a</p>
<p>1 BY MR. McDONALD:</p> <p>2 Q. Do you recall what the name of the SAP</p> <p>3 product is that they developed themselves that</p> <p>4 involves the catalog management?</p> <p>5 A. Catalog management under SAP, they've gone</p> <p>6 through best that I can recall 3 different gyrations</p> <p>7 of their catalog management system, some that they</p> <p>8 license, some that they developed internally.</p> <p>9 Q. Currently, do you know what it's called?</p> <p>10 A. Let me see if I can recall the name of</p> <p>11 their -- I should know. I've got a -- I don't recall</p> <p>12 it at this moment.</p> <p>13 Q. Have they gone through 3 different brand</p> <p>14 names on it over the last few years?</p> <p>15 A. The names have changed over the numbers of</p> <p>16 years, yes.</p> <p>17 Q. How about for Ariba?</p> <p>18 Do they have a similar deal as SAP with</p> <p>19 respect to whether the system is licensed or not?</p> <p>20 MR. ROBERTSON: Objection, vague and</p> <p>21 ambiguous, and calls for a legal conclusion.</p> <p>22 A. There's nuances within each agreement in</p> <p>23 terms of how their licenses extend, but again, I'd</p> <p>24 have to go back to each individual one.</p> <p>25 BY MR. McDONALD:</p>	<p>50</p> <p>1 lawyer, so at a very high level?</p> <p>2 MR. ROBERTSON: And we're talking about</p> <p>3 the Ariba contract for now.</p> <p>4 MR. McDONALD: Ariba.</p> <p>5 A. Yes.</p> <p>6 My high-level understanding and</p> <p>7 recollection of that was that it could be extended to</p> <p>8 their clients as it related to the Ariba code as</p> <p>9 delivered by Ariba.</p> <p>10 BY MR. McDONALD:</p> <p>11 Q. What is your business understanding as to</p> <p>12 what the limits if any were on the SAP license?</p> <p>13 A. That the -- again, at a very high nonlegal</p> <p>14 definition understanding as delivered to their</p> <p>15 customers for SAP-delivered code, and I think there</p> <p>16 was an exclusion at a catalog level of</p> <p>17 non-SAP-developed catalog code.</p> <p>18 And I'm sure there were many other nuances</p> <p>19 of that agree- -- of both those agreements that I'd</p> <p>20 have to look at closer.</p> <p>21 Q. Perfect Commerce is also a licensee.</p> <p>22 Right?</p> <p>23 A. Yes, they are.</p> <p>24 Q. What is your understanding as to what</p> <p>25 types of systems Perfect Commerce provides?</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

<p>1 A. Perfect Commerce, again, procurement 2 catalog management. 3 Q. Does Ariba provide both procurement and 4 catalog management? 5 A. Does procure- -- does Ariba -- 6 Q. Yes. 7 A. -- provide electronic procurement and 8 catalog management? 9 Q. Right. 10 A. Yes. 11 Q. Does SAP also provide both electronic 12 procurement and catalog management? 13 A. Yes. 14 Q. Is Perfect Commerce licensed for both 15 electronic procurement and catalog management from 16 ePlus? 17 A. I believe they are, yes. 18 Q. Do you have any understanding at a 19 business level as to any limitations on that license? 20 A. Yes. 21 There were limitations. I'd have to go 22 back to the license to recall. Again, each one had 23 its little oddities to them. 24 Q. Were you involved in negotiating all these 25 licenses?</p>	<p>53</p> <p>1 This electronic catalog is -- I'm not sure 2 I understand your question in terms of the 3 correlation of Sears. 4 Q. Even if you pull somebody off the street 5 who is not in your business and you talk to them 6 about a catalog, a Sears catalog might come to mind. 7 Is that fair? 8 A. Perhaps, yeah, from a laymen's 9 perspective, yes. 10 Q. I use that as an example. 11 Is there something else you think a 12 layperson walking down the street would think of when 13 they think of a catalog other than a Sears catalog? 14 A. I look at things myopically. They may 15 come up with other things. I'm just too close to it, 16 I think. 17 MR. ROBERTSON: Victoria's Secret comes to 18 mind. 19 THE WITNESS: Yeah. 20 BY MR. McDONALD: 21 Q. Is an electronic catalog an electronic 22 version in the sense of a paper catalog such as -- 23 I'm going to stick with the Sears catalog? 24 A. No. 25 Q. How is it different?</p> <p>55</p>
<p>1 A. I was. 2 Q. SciQuest has a license as well. 3 Correct? 4 A. Yes. 5 Q. What is your understanding as to what 6 types of system SciQuest sells? 7 A. Electronic procurement and catalogs. 8 Q. When you say, they sell catalogs, can you 9 explain what you mean by that? 10 A. Well, catalog management. 11 Q. Okay. Maybe we should kind of make sure 12 we both know what we're talking about with that term. 13 A. Sure. 14 Q. Can you explain what you mean by, catalog 15 management? 16 A. At a high level, when I say, catalog 17 management, it's the ability to have an electronic 18 catalog that represents the elements that -- that 19 would be typically used by a purchasing system 20 accessed by an electronic procurement system. 21 Q. Is an electronic catalog basically an 22 electronic version of what lay people would refer to 23 as a catalog for somebody like Sears? 24 A. I don't know. I've never done that 25 correlation.</p>	<p>54</p> <p>1 A. I think, you know, when you look at a 2 paper catalog, a paper catalog is, you know, 3 something that somebody is physically touching. 4 Right? 5 I mean, it has -- you have to manually go 6 through a paper catalog, find what it is that you're 7 looking for. Whereas an electronic catalog, you 8 know, as we're referring to, is one that has 9 information contained about the product that may be 10 cross-referenced with -- with other similar products 11 of its type and then have a lot of, you know -- not a 12 lot -- doesn't necessarily mean a lot -- but has 13 attributes associated with it. 14 Q. What do you mean by, attributes? 15 A. Generally referred to in the industry as 16 kind of fit, form, and function, electronically 17 representing different elements of the -- of the part 18 or item. 19 So let's -- let's use the example of a 20 shirt, color, size, sleeve length, picture. 21 Q. Parts of what would describe the product? 22 A. All the elements that would describe the 23 product would be a fair analogy. 24 Q. And also have some graphic representation 25 like a picture or diagram or something?</p> <p>56</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

<p>1 A. A -- when they're available, it would have 2 a graphic representation and it would have a 3 correlation to other similar products within -- 4 within that catalog. 5 Q. So generally, an electronic catalog would 6 have the same type of information that a paper 7 catalog would have, but it would also have some 8 additional functionality, for example this ability to 9 cross-reference similar products. 10 Is that fair? 11 A. That's right one of the differences. 12 There may be other differences as well. 13 Q. What are the other differences? 14 A. Sometimes there's attachments associated 15 with the item. Sometimes there's the ability to know 16 if the item is in inventory, which you wouldn't get 17 out of a paper catalog. Sometimes there's video 18 associated with it, doesn't have to be, but can be. 19 Those are a few examples. 20 Q. When you say, attachments, can you give me 21 an example of what an attachment would be? 22 A. Sure. 23 An attachment may be -- consider a 24 category like you're building an airplane and you're 25 purchasing an element for a rotor blade. You may</p>	<p>57</p> <p>1 A. Right. 2 And those are good -- good examples. 3 Q. Can you think of anything else as you're 4 sitting here right now? 5 A. In terms of capabilities of catalog 6 versus -- 7 Q. In terms of any other differences between 8 an electronic catalog as you're talking about it 9 today versus, you know, what you might call an 10 old-fashioned paper catalog. 11 A. Sure. 12 I'd say an electronic catalog. 13 Let's see what else comes to mind -- 14 differences -- oh, provides the ability to interact 15 with an electronic procurement system in such a way 16 that you can compare and select multiple products 17 through searching, and then convert that information 18 to be part of a workflow of a procurement system and 19 interact with a procurement system so -- in such a 20 way that it has the ability to electronically issue 21 purchase orders to the suppliers. 22 And I'm sure there's others, but those are 23 the ones that come to my immediate -- forefront of my 24 mind. 25 MR. McDONALD: Why don't we go ahead and</p> <p>59</p>
<p>1 want to give the supplier -- or have the supplier 2 provide to you rather the specifications of that part 3 for that rotor blade -- for that rotor blade, and 4 that may show up as an attachment. So that's called 5 their specification sheets. 6 It may describe the torque that it has to 7 be installed it. It may have an installation guide 8 associated with it. 9 So it's additional information that the 10 suppliers may want to provide to the purchasers at a 11 more detailed level of granularity. 12 Q. Any other differences between an 13 electronic catalog and a paper catalog other than the 14 ones you've listed? 15 A. I'm sure there's others. I just have to 16 kind of go through them in my mind, but -- 17 Q. I'll just refresh you with what you 18 already said. 19 A. Sure. 20 Q. You mentioned cross-referencing similar 21 products. 22 A. M-hm. 23 Q. Attachments, providing information about 24 whether the product is in inventory, and at least the 25 option of providing video.</p>	<p>58</p> <p>1 take a break. We've been going for a while. 2 THE WITNESS: Okay. 3 THE VIDEOGRAPHER: The time is 4 approximately 1:29 PM. We're going off the video 5 record. 6 (Recess.) 7 THE VIDEOGRAPHER: The time is 8 approximately 1:44 PM. We're back on the video 9 record. 10 BY MR. McDONALD: 11 Q. Mr. Farber, I'd like to return to 12 something we were talking about earlier with respect 13 to early 2009 when you were looking into the issues 14 that led to the lawsuit, and I think you talked about 15 identifying some companies that ePlus was running up 16 against more frequently. 17 Do you recall that area? 18 A. Yes. 19 Q. Okay. And as a result of identifying 20 those companies that you ran into more frequently, 21 did you take the names of those companies and then 22 turn them over to counsel for further investigation? 23 A. Ultimately, yes. 24 Q. Was there anything else you did in between 25 identifying which companies you were running into</p> <p>60</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

<p>1 more frequently and providing the names to counsel 2 for further investigation?</p> <p>3 A. Is there anything that I did other than 4 turning -- once I determined -- no. I believe 5 provided the information to counsel.</p> <p>6 Q. Were the companies you identified to 7 counsel Perfect Commerce, Verian, SciQuest, and 8 Lawson?</p> <p>9 A. Yes, I believe that's correct.</p> <p>10 Q. Were there any other companies on that 11 list?</p> <p>12 A. Not to my knowledge.</p> <p>13 Q. As part of that process, did you learn 14 anything new about the functionality or capabilities 15 of the Lawson products that you didn't know before?</p> <p>16 A. I haven't been exposed to that -- to that 17 much other -- other than conversations with -- with 18 counsel.</p> <p>19 Q. And I just want to be clear. I'm talking 20 about before talking to counsel.</p> <p>21 A. Did I learn anything --</p> <p>22 Q. -- new about the functionality or 23 capability of the Lawson products as part of this 24 early 2009 process of identifying the companies you 25 were running into.</p>	<p>61</p> <p>1 in the procurement and catalog management areas? 2 A. Oh, gosh, there's literally dozens of what 3 we could perceive as competitors.</p> <p>4 Q. I was looking for the main ones like we 5 had identified the top 4 --</p> <p>6 A. Okay.</p> <p>7 Q. -- remember for 2004.</p> <p>8 Can you give me a comparable list for 9 2005?</p> <p>10 A. I -- I think that it would be a similar 11 list as we discussed earlier.</p> <p>12 Q. A list I think you gave for 2004 was 13 Ariba, SAP, Perfect Commerce, and you said a host of 14 other competitors, and you gave Ketera as a specific 15 example. At least that's what my notes indicate.</p> <p>16 A. Okay.</p> <p>17 Q. I'm just giving you that to set up the 18 question here.</p> <p>19 In 2005, did you consider the primary 20 competitors Ariba, SAP, and Perfect Commerce?</p> <p>21 A. Well, you reminded me of Oracle, slash, 22 PeopleSoft, so going back a number of years ago, I'm 23 sure that they were in the mix. I think I stated 24 there are very slim differentiations between primary 25 and I guess nonprimary, to use those words, so there</p>
<p>1 Let me just rephrase the question because 2 it's getting pretty long now.</p> <p>3 A. Yeah, yeah.</p> <p>4 Q. Back as -- we'll call it that 5 investigation that you were doing of the companies?</p> <p>6 A. Yes.</p> <p>7 Q. All right.</p> <p>8 As part of that investigation before you 9 went to the lawyers with the names of the 10 companies --</p> <p>11 A. M-hm.</p> <p>12 Q. -- did you learn anything new about the 13 functionality or capabilities of the Lawson products 14 that you didn't know before?</p> <p>15 A. Not that I can recall the structure.</p> <p>16 Q. Was there anybody else at the company 17 other than you that was involved in this process of 18 identifying companies for the lawyers?</p> <p>19 A. No.</p> <p>20 Ultimately, it was -- it was me.</p> <p>21 Q. Earlier, we talked about what you knew 22 about Lawson in 2004.</p> <p>23 Now I want to hit some other years.</p> <p>24 A. Okay.</p> <p>25 Q. In 2007, who were ePlus's main competitors</p>	<p>62</p> <p>1 were a host of other perceived competitors.</p> <p>2 Q. And when you identified the list of main 3 competitors, are you identifying the companies that 4 ePlus was most often running up against?</p> <p>5 A. Again, that balance and tie changes.</p> <p>6 One, you know, particular company we may 7 not be running up against, but they may have been 8 infused with a lot of cash for market, so they're 9 making a lot of noise in the industry. How serious 10 of a contender they are depends.</p> <p>11 As I indicated earlier, there's many, many 12 occasions where you don't know who your competitors 13 are. The prospects are tight-lipped about that 14 situation.</p> <p>15 Q. What criteria were you using when you were 16 identifying your primary competitors?</p> <p>17 A. Well, your definition of a primary 18 competitor limited to 4 is much narrower than my 19 definition of a primary competitor, but it's a 20 combination of those that you run into in sales 21 situations, those that you see doing a lot of infused 22 marketing in the industry or advertising to promote 23 their -- their solutions, those that are covered by 24 the analysts, articles, press releases, a combination 25 of things that -- that are in play.</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

	<p>1 Q. With -- with that definition, you 2 mentioned the number 4.</p> <p>3 And -- and for 2005, would you have a 4 different number than 4 as your primary competitors, 5 using your definition?</p> <p>6 A. Well, that's not my definition.</p> <p>7 Primary competitors for me fall probably 8 into the dozens. I don't limit them to 4.</p> <p>9 Q. So when you list the 4, are you just -- 10 those are just the highest-ranking on that list in 11 terms of how much you run into them in the 12 marketplace, how much they're spending on advertising 13 and marketing, and how much analysts cover them?</p> <p>14 A. Maybe for that particular moment in time. 15 At the particular instance that that question was 16 asked, those may have been in the forefront of my 17 mind.</p> <p>18 3 months later, it very well could have -- 19 could have changed.</p> <p>20 Q. Well, let's go ahead and go to the next 21 year, then.</p> <p>22 For 2006, who would you identify as the 23 primary competitors for ePlus?</p> <p>24 A. I think that again you'd have a similar 25 list. You'd have -- start to see some others, you</p>
	<p>1 know, coming into the market as well. 2 It's pretty difficult for me to determine 3 year by year which are the competitors, because 4 they're -- there's a subset of companies that have 5 been in the space or stated that they're in the space 6 for a period of time and those that come and go, 7 so --</p> <p>8 Q. For 2006, would Ariba, SAP, Perfect 9 Commerce, and Oracle, slash, PeopleSoft still be on 10 the list of primary competitors?</p> <p>11 A. They would be part of the list of 12 competitors.</p> <p>13 Q. In 2006, who else would be on that list of 14 primary competitors?</p> <p>15 A. I think you'd see Ketera, Basware. I 16 think there was a lot of marketing, but I'm not 17 necessarily sure of product development and what was 18 available from a company called Coupa, C-O-U-P-A 19 Technologies.</p> <p>20 You know, there's dozens. There's, you 21 know --</p> <p>22 Q. Would you consider Lawson one of the 23 primary competitors in 2006?</p> <p>24 A. I think I would have considered them a 25 competitor in 2006. I don't know where they would</p> <p>1 stack against everybody, you know, at that particular 2 moment in time.</p> <p>3 Q. Did you consider Lawson an ePlus 4 competitor in 2005?</p> <p>5 A. We may have run across them. I don't know 6 that I can give you a particular instance off the top 7 of my head, but I believe that -- that Lawson was in 8 the procurement space during that time.</p> <p>9 Q. So whether you ran into them specifically 10 head to head or not in 2005, your belief is that 11 Lawson was a competitor?</p> <p>12 A. I believe they were in their space -- in 13 the space, yes.</p> <p>14 Q. Well, I'm asking about competitor. You're 15 talking about space. I just want to make sure we're 16 talking about the same thing.</p> <p>17 A. Well, yeah -- I mean, from a -- yes, I 18 think we are referring to the same thing.</p> <p>19 Q. Okay. So "space" means competitive space?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. 2007 --</p> <p>22 A. M-hm.</p> <p>23 Q. -- would your list of the top primary 24 competitors change?</p> <p>25 A. I think they would just be potentially</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

<p>1 more prominent. You know, there was a period of time 2 later on where we had the capability and the cycles 3 to start looking at some of these perceived 4 competitors.</p> <p>5 Q. What do you mean by -- (indiscernible)?</p> <p>6 A. Well, they were competitors. And we were 7 involved in other things as a company with limited 8 resources, whether it was relative to litigation or 9 other things, and, you know, competing day to day 10 with companies and not having the resources or 11 financial means necessary to pursue what may have 12 been perceived at the time.</p> <p>13 Q. When you say you lacked resources, you 14 lacked resources to pursue what?</p> <p>15 A. Undertaking a further evaluation of those 16 companies.</p> <p>17 Q. So at some point, you had more resources 18 where you could evaluate competitor products?</p> <p>19 A. I don't know that I can necessarily say I 20 had more resources, but there was a reprieve as far 21 as prior litigation was concerned, and a reprieve 22 from, you know, other functions and other things that 23 we were looking to do within the company to give us a 24 time to be able to look closer.</p> <p>25 Q. When did that reprieve take place?</p>	<p>69</p> <p>1 A. Stock options, yeah. 2 So -- so that took a lot of -- a lot of 3 resources from the company. 4 Q. What were the issues regarding stock 5 options?</p> <p>6 A. Just questions in terms of, were we 7 properly dating and pricing the options. 8 Q. What was the conclusion of that 9 investigation?</p> <p>10 A. We were -- we cleared that hurdle. 11 Q. Did you have to go back and restate 12 anything?</p> <p>13 A. There was a restatement I think on -- on 14 some revenue. 15 Q. Were the options redated? 16 A. I don't know. I don't recall. 17 Q. Do you hold stock options? 18 A. I do. 19 Q. How many? 20 A. Approximately 50,000, I think. 21 Q. Were there any other activities that were 22 taking significant company resources between 2007 and 23 2009 other than this stock options issue? 24 A. No. 25 That was considerable. The -- there was</p>
<p>1 A. This past year. 2 Q. 2009? 3 A. Yeah, yeah. 4 Q. You weren't in litigation in 2008, were 5 you? 6 A. I don't believe so. 7 Q. When I say, litigation, I mean, litigation 8 involving patents. 9 A. No. 10 That's correct. 11 Q. Yeah. 12 Was there any other significant litigation 13 going on that was a drain on or a diversion of 14 company resources between 2007 and 2009? 15 A. There were a number of things that were -- 16 the company was undertaking that was a diversion, 17 yes. 18 Q. What were the other activities of the 19 company that were taking resources between 2007 and 20 2009? 21 A. Well, as an org- -- as a company, we were 22 involved along with 700 other companies or peers in 23 the industry on reevaluating how stocks were issued 24 and when they were dated and those sort of things. 25 Q. Stocks or stock options?</p>	<p>70</p> <p>1 also the consideration of my time and projects that I 2 was working on for the company that precluded me from 3 looking in other areas. 4 Q. What was your focus in 2007 and 2008? 5 A. Primary focus was to -- a number of 6 different focuses. 7 One was, we were undertaking some major 8 development projects, so it was oversight of those -- 9 of development projects and new products, both for 10 internal and external use. There was oversight of 11 the operations of the divisions and groups that I'm 12 responsible for at the company and focusing back on 13 our core business as a company, since I was taken out 14 of that stream for a while due to prior litigation. 15 Q. Anything else in 2007 and 2008 that was a 16 focus for you? 17 A. Well, I think the other focus was -- was 18 maintaining or trying to maintain the P and L as we 19 had some -- I don't know if you want to call it a 20 premonition, but we saw markets changing and business 21 changing in the industry. 22 And I don't want to say that we forecasted 23 an economic downturn, but we were very cognizant of 24 the fact that people's spending patterns were 25 changing, and we concentrated very heavily in our</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

<p>1 organization in reducing costs wherever possible so 2 that we could ride out whatever potential storm was 3 going to occur. 4 Q. So that was something else you were 5 working on personally between 2007 and 2008? 6 A. Yes. 7 Q. With respect to the major development of 8 new products -- 9 A. M-hm. 10 Q. -- what external new products were you 11 involved with developing in 2007 and 2008? 12 A. Our business intelligence spend analytics 13 product, you know, providing oversight and direction 14 in that particular area. Our customer-facing 15 1-source application, providing oversight and 16 direction in that area as well. 17 Q. I think we talked about spend analytics 18 earlier when we talked about the product groups. 19 That was a new product group that was 20 added a couple years ago. 21 Right? 22 A. Yes, that's correct. 23 Q. And so that's this new product line that 24 you're talking about? 25 A. For spend plus.</p>	<p>73</p> <p>1 ePlus, they had a product that was customer-facing 2 to -- to allow customers to purchase. 3 Q. Is this a product that customers could 4 access through the Internet? 5 A. Yes. 6 Q. Well, as I understand what you're saying, 7 1-source was somehow a new product that was a 8 customer-facing product. 9 Correct? 10 A. New generation of an older product. 11 Q. Okay. When did the new generation of 12 1-source product come out? 13 A. Within the last 3 years. 14 Q. When you said one of things you also did 15 in the 2007 to 2008 time frame was to focus on the 16 core business -- 17 A. M-hm. 18 Q. -- can you explain what the core business 19 is? 20 A. Well, the core business for me, which was 21 our suite of products and associated services, so 22 procurement, content management, asset management, 23 spend analytics. 24 Q. The 5 categories you talked about -- 25 A. That's correct.</p>
<p>1 Q. Spend plus. 2 And generally what does spend plus do? 3 A. It takes accounting data, procurement data 4 and analyzes spend and -- spending patterns for 5 companies. 6 Q. That product doesn't use the patents 7 involved in this suit directly, does it? 8 MR. ROBERTSON: Objection, calls for a 9 legal conclusion. 10 A. My business-level knowledge of the patents 11 would believe that the spend plus solution doesn't -- 12 is a separate entity from the patents. 13 BY MR. McDONALD: 14 Q. What is a 1-source? 15 A. 1-source is a customer-facing application 16 that is used by our customers at ePlus when they're 17 purchasing hardware and software from ePlus. 18 Q. So this isn't helping their general 19 purchasing of their day-to-day stuff. 20 This is specific to purchasing from ePlus? 21 A. That's correct. 22 Q. When was that product introduced? 23 A. There have been -- there was a product -- 24 I don't know if it was -- it might have been called 25 1-source back then, but when I came on board at</p>	<p>74</p> <p>1 Q. -- earlier? 2 About what percentage of ePlus Inc.'s 3 revenues comprised the product lines that you're 4 responsible for? 5 A. That's always been a hard summation for 6 the following reason: There's stand-alone revenue, 7 and then there's revenue that's associated with the 8 applications that ePlus runs as a company in their 9 back office to support their other -- their other 10 customers. 11 So we've never successfully correlated the 12 contribution of that to that side of the business. 13 Q. In terms of internal reporting purposes, 14 though, do you somehow try to identify what your 15 division's revenues are and -- 16 A. As a stand-alone division, yes. 17 Q. Okay. So if we focus on that stand-alone 18 division, what -- approximately what percentage of 19 ePlus's overall revenues are in your division? 20 A. It's less than 10 percent. 21 Q. Approximately what are the overall 22 company's annual sales? 23 A. I think the last fiscal reporting was 6 24 hundred and some-odd million. 25 Q. Fiscal year ends in March; is that right?</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

1 A. In March, that's correct. 2 Q. So as of March '09, it was in the 600 3 million-plus range? 4 A. Yes. 5 Q. What were the sales in your division for 6 that same time period? 7 A. Just give me one second. 8 Probably for all the software and 9 services, maybe 9 million or so, so -- 10 Q. What percentage are you saying 9 million 11 would be of 600 million? 12 A. I knew you were going to go there. 13 Q. Okay. 14 A. So there's a number of customers that 15 running -- that are running our software that are 16 also buying from ePlus, so that becomes a component 17 of our offering to the customer that we don't 18 necessarily charge a license to. 19 Q. So these are customers that are using 20 ePlus to outsource basically their procurement 21 services? 22 A. No. 23 These are customers that are buying from 24 ePlus, hardware and software, that are using our 25 procurement catalog management system because of its	77 1 Right? 2 A. Well, our -- yes. 3 Q. That's about -- that's a little less than 4 2 percent of the overall company? 5 A. That's right, of the overall company. 6 Q. Are most of the overall company's revenues 7 from the hardware and software VAR sales? 8 A. There's a -- the largest percentage of 9 revenue is from the VAR business, followed by our 10 financing division and our consulting division. 11 Q. What does the financing division do? 12 A. Finances transactions for customers, basic 13 leasing. 14 Q. Leasing hardware and software products -- 15 A. No. 16 Q. -- or anything? 17 A. Anything. 18 Q. Okay. What does the consulting division 19 do? 20 A. They install hardware. They support 21 hardware. They design architecture. They do 22 offshore -- not "offshore" -- they do outsource 23 development projects for customers. 24 Q. Is this mostly the computer hardware and 25 software area?	79
1 advanced functionality to use certain functions of 2 those applications to interact directly with ePlus. 3 Q. For what purposes do they -- do the 4 customers in those situations interact with ePlus? 5 A. Well, ePlus -- one side of ePlus is a VAR, 6 right, a value-added reseller of hardware and 7 software, so we represent and resell different 8 hardware and software from a multitude of 9 manufacturers. They're using our systems to interact 10 with us. 11 Q. The customers that use the software and 12 services your division provides, they could use 13 anybody for value-added reselling of hardware and 14 software. 15 Right? 16 A. The software is agnostic to -- who the 17 customers want to utilize as their suppliers. 18 Q. By, agnostic, do you mean independent -- 19 A. M-hm. 20 Q. -- essentially? 21 A. Yes. 22 Q. So the actual software and services 23 revenues of your division are 9 million dollars? 24 A. Yeah, roughly, that's correct. 25 Q. For the year ending March of '09.	78 1 A. Yes, it is. 2 Q. Any other sort of consulting other than 3 that? 4 A. Outside of -- 5 Q. Computer hardware and software. 6 A. No, no. 7 Q. In 2007, who were the primary competitors 8 within your division now if we return -- 9 A. Right. 10 Q. -- back to your bailiwick. 11 A. You know, I think we're, you know, seeing 12 the same vendors and probably growing, you know, at 13 various levels and verticals, and, you know, we're 14 starting to see at that time perhaps more -- more 15 companies making more of a push into certain vertical 16 markets and offering very specific solutions for 17 those verticals. 18 Q. When you say, vertical markets, what do 19 you mean? 20 A. Vertical markets such as health care, 21 manufacturing, finance, insurance. 22 Q. So that's the business of the specific 23 customer that might be buying your products? 24 A. Correct. 25 Q. Do you look at the barriers to entry in	80

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

<p>1 the areas of electronic procurement, catalog 2 management to be relative low? 3 A. What do you refer to as the barriers of 4 entry? 5 Q. The same sort of thing that ePlus would 6 talk about in its annual reports. 7 A. I'm not quite certain that we talk about 8 barriers of entry, so you have to point out the 9 reference, and I'll discuss it. 10 Q. Just give me a moment here. 11 A. Sure. 12 (Pause.) 13 MR. McDONALD: Mark that as the next 14 exhibit. 15 (Lawson Exhibit No. 15 16 was marked for 17 identification.) 18 BY MR. McDONALD: 19 Q. Mr. Farber, you have before you what's 20 been marked as exhibit 15. 21 Do you recognize it? 22 A. Yep, yes, I do. 23 It's the annual report. 24 Q. For what year? 25 A. 2009.</p>	<p>81</p> <p>1 17. 2 A. Okay. 3 Q. You see at the top of the page, there's a 4 heading there, quote: The electronic commerce 5 business-to-business solutions market is highly 6 competitive, and we may not be able to compete 7 effectively, quote. 8 Do you see that? 9 A. Yes, I do. 10 Q. Do you consider your division to be within 11 the description of electronic commerce 12 business-to-business solutions market? 13 A. My particular division is -- is part of 14 that group, yes. 15 Q. And your understanding is, the company 16 tries to be accurate in the annual report with what 17 it discloses to shareholders. 18 Right? 19 A. Absolutely. 20 Q. So you would agree that's an accurate 21 statement that I just read that that business is 22 highly competitive. 23 A. Yes. 24 Q. And we may not be able to compete 25 effectively?</p> <p>83</p>
<p>1 Q. So that's for the year ending March 31, 2 2009? 3 A. Yes, I believe so. 4 Yep, that's correct. 5 Q. Can you turn to the risk factors section, 6 which begins I believe at page 12. 7 A. Okay. Okay. 8 Q. Do you have an understanding for the 9 purposes of an annual report like this what the 10 section on risk factors relates to? 11 A. I do. I have some understanding of that. 12 Q. What's your understanding? 13 A. Risk factors highlight those areas that a 14 company could be adversely affected by that may be 15 either within or -- you know, or outside of their 16 control. 17 Q. Is this -- a risk factor something a 18 publicly traded company has an obligation to disclose 19 to its shareholders? 20 A. Yes, they do. 21 Q. That's what this section here beginning at 22 page 12 is about. 23 Right? 24 A. Correct. 25 Q. Can you turn within the section to page</p>	<p>82</p> <p>1 A. Yes. 2 Q. And in the second paragraph there, do you 3 see where it says, quote, in the first sentence: 4 Because there are relatively low barriers to entry in 5 the electronic commerce market, competition from 6 other established and emerging companies may develop 7 in the future, quote. 8 Do you see that sentence? 9 A. I do. 10 Q. Would you agree that's an accurate 11 statement? 12 A. I believe it would be accurate, yes. 13 Q. So in this context -- I think earlier you 14 asked me what did I mean by, barriers to entry. 15 A. M-hm. 16 Q. In that context of this sentence, what is 17 your understanding as an executive of ePlus Inc. as 18 to what barriers to entry means? 19 A. Well, I think that -- in this reference, 20 first of all, at a higher level, the electronic 21 commerce business-to-business solution is more than 22 just the procurement and catalog management offering 23 of ePlus. 24 Q. It includes your division as well as other 25 parts of the company?</p> <p>84</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

	<p>85</p> <p>1 A. Absolutely.</p> <p>2 So with that, in terms of, you know,</p> <p>3 relatively low barrier of entry into the commerce</p> <p>4 market, it is a market that has matured. You're not</p> <p>5 trying to create a market. It's one that already</p> <p>6 exists. It allows other companies to emerge over</p> <p>7 time, whether present or in the future.</p> <p>8 Q. What is your understanding as to what</p> <p>9 would be an example of a higher barrier to entry for</p> <p>10 a given industry?</p> <p>11 A. Okay. I'll give you an example.</p> <p>12 Back when the -- in the 19 -- early</p> <p>13 1990s, when perhaps the patents were first coming out</p> <p>14 or devised by the inventors, the procurement market</p> <p>15 was not a market like it is today. People weren't</p> <p>16 doing a lot of the functions that exist today in</p> <p>17 electronic procurement systems.</p> <p>18 So there's a higher barrier to market in</p> <p>19 terms of showing value, showing ROI, creating the</p> <p>20 market and the opportunity for customers. So that's</p> <p>21 just one example within our market.</p> <p>22 Q. Well, does that make marketing the product</p> <p>23 difficult, or does it make it difficult to enter the</p> <p>24 market?</p> <p>25 A. It's both. I think it's fair to say that</p>		
		<p>86</p> <p>1 it's both?</p> <p>2 Q. Those are 2 different things though.</p> <p>3 Would you agree with that?</p> <p>4 A. Marketing and entering?</p> <p>5 Q. Yes.</p> <p>6 A. In one sense, they go hand in hand.</p> <p>7 In another sense, you can market all you</p> <p>8 want, but the industry has to be convinced of</p> <p>9 something new. And that could be in the form of</p> <p>10 -- (indiscernible) -- press, whatever.</p> <p>11 Q. What happened?</p> <p>12 Computers have just gotten cheaper, more</p> <p>13 powerful, more prevalent in business since the early</p> <p>14 '90s?</p> <p>15 A. Certainly computers and hardware have</p> <p>16 certainly become cheaper over time, certainly, yes.</p> <p>17 Q. Has that made it easier for other</p> <p>18 companies to enter this market?</p> <p>19 A. No.</p> <p>20 It has nothing to do with the cost of the</p> <p>21 hardware that's made it -- I think it's easier for</p> <p>22 people to enter the market now because it is a</p> <p>23 recognized market.</p> <p>24 Q. Would it take --</p> <p>25 A. It's an established market.</p>	88

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

89	91
<p>1 division today that the marketplace is still learning 2 about this product? 3 A. I think there's still a high barrier for 4 people to enter the market to develop technology to 5 be in parity with other companies in the market, no 6 different to use a different analogy that you have, 7 you know, 3 or 4 primary automobile manufacturers in 8 the industry.</p> <p>9 It's an established market. Everybody 10 knows what the automobile does now.</p> <p>11 But if I were to establish a new company 12 to manufacture automobiles, yeah, it's a low barrier 13 to -- to -- in the market in terms of recognition.</p> <p>14 You're not creating the automobile and saying it's 15 better than a horse-drawn carriage, but it's very 16 expensive to start manufacturing ground up to create 17 the automobile that's in parity with others that are 18 on the market.</p> <p>19 Q. Would you agree with what's said on page 20 17 of the annual report that there are relatively low 21 barriers to entry in the electronic commerce market 22 or not?</p> <p>23 A. As I stated --</p> <p>24 MR. ROBERTSON: Objection, asked and 25 answered.</p>	<p>1 It's refer- -- our definition, it's 2 referring to that it's a recognized, available 3 market, and we're not trying to create a new market.</p> <p>4 We're not trying to create an automobile that has 5 wings and convince people it can fly.</p> <p>6 Q. In 2007, did you consider Lawson to be 7 among your competitors within e-procurement and 8 catalog management?</p> <p>9 A. I believe they were part of the mix of 10 vendors that we may have considered as competitors.</p> <p>11 Q. In 2008, was Lawson also a competitor in 12 those areas?</p> <p>13 A. I would believe so.</p> <p>14 Q. In 2008, who did you consider to be your 15 primary competitors in those areas?</p> <p>16 A. It's what I answered earlier, same, same 17 list and probably growing.</p> <p>18 Q. Well, would you add anybody in 2008 that 19 you didn't have in your prior list?</p> <p>20 A. I'm sure.</p> <p>21 Q. Who would you add?</p> <p>22 A. I'd have to go back and fill in the gaps 23 for you of all the companies.</p> <p>24 Q. Can you give me -- go ahead and take a 25 moment if it would help you.</p>
90	92
<p>1 But go ahead.</p> <p>2 A. I'll repeat my answer.</p> <p>3 Low barrier as it relates to the fact that 4 it's a recognized market today.</p> <p>5 BY MR. McDONALD:</p> <p>6 Q. Well, this sentence here on page 17 is not 7 limited to market recognition, is it?</p> <p>8 A. Well, it's saying the market for 9 Internet-based business-to-business electronic 10 commerce solutions is competitive.</p> <p>11 That's number 1.</p> <p>12 Right?</p> <p>13 And we expect it to intensify with new 14 products, new competitors in the market.</p> <p>15 And then the next paragraph, it's saying 16 that -- I'm sorry -- further down, it says: Our 17 strategy of providing Internet-based electronic 18 commerce solutions may not be successful or we may 19 not execute it effectively. Accordingly, our 20 solution may not be widely adopted by business.</p> <p>21 So we're making an investment in 22 technology that may or may not be widely adopted 23 going forward. But there's low barriers to entry not 24 as it relates to how much it costs to get into the 25 market.</p>	<p>1 A. All right.</p> <p>2 Q. I'd just like to see what your 3 recollection is of that right now.</p> <p>4 A. In terms of new companies that enter the 5 market that would be perceived competitors?</p> <p>6 Q. I don't know if they're new companies, but 7 they're companies that you have not named yet today 8 as amongst your primary competitors.</p> <p>9 A. Okay. There were companies that entered 10 the market like Protivity. There were companies that 11 entered the market -- or that actually I probably 12 should have named earlier that may have been in the 13 market, fluctuated in terms of -- trying to think -- 14 I think I exhausted my recollection at this point.</p> <p>15 Q. Generally, is it true that in the 2007, 16 2008 time frame, you had dozens of competitors in 17 e-procurement and catalog management?</p> <p>18 A. I think there's more than dozens, but, 19 yes, there were a significant number of competitors.</p> <p>20 Q. More than a hundred?</p> <p>21 A. Approaching.</p> <p>22 Q. Is that still true in 2009?</p> <p>23 A. Yeah.</p> <p>24 They come and go every day.</p> <p>25 Q. But overall, the number is still in that</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual 12/16/2009 12:00:00 PM

93	95
<p>1 range of many dozens, close to a hundred?</p> <p>2 A. Oh, yes, yes.</p> <p>3 Q. Was that also true in 2005 and 2006?</p> <p>4 A. Maybe not as true, maybe not as many.</p> <p>5 Maybe half to three-quarters of that size.</p> <p>6 Q. So a few dozen, maybe closer to 50 or somewhere in --</p> <p>7 A. Yeah, yeah.</p> <p>8 Q. -- that region?</p> <p>10 Okay. When you're out there competing in the marketplace, do you try to develop a list of ways to distinguish you from your competition?</p> <p>13 A. I think you always try to distinguish yourself with some level of value against any competitor in the market.</p> <p>16 Q. In the e-procurement and catalog management areas, what is ePlus's sales pitch to prospects as to how its different and better than its competition?</p> <p>20 A. Well, I think the one that comes foremost to my mind in terms of differentiators are, 1, the length of time that we have been doing this, that we have been in the procurement business much before many of these companies were even incorporated that we compete with, so that's one story line if you</p>	<p>1 A. Well, ePlus as a company has -- you know, when I joined in the end of 2000, 2001, they were -- they'd been involved in selling e-procurement systems from the time that I joined, but our individuals within the company were with prior companies that far exceeded ePlus's experience.</p> <p>7 Q. So when you got to the company in 2000 or 2001, there were a number of employees at ePlus who had worked at prior companies specifically in the e-procurement catalog management area?</p> <p>11 A. No.</p> <p>12 There were individuals that worked with me at procure net, which ePlus acquired, that were in the field for a significant length of time.</p> <p>15 Q. Procure net was a separate company from ePlus.</p> <p>17 Right?</p> <p>18 A. That's correct.</p> <p>19 Q. Did ePlus acquire assets of procure net?</p> <p>20 A. Yes.</p> <p>21 Q. Was it assets relating to the e-procurement product line?</p> <p>23 A. Procurement catalog management.</p> <p>24 Q. Was ePlus formed around the 2000 time frame?</p>
94	96
<p>1 will.</p> <p>2 Experience of our people, knowledge of our people, expertise that we have in the procurement arena and the length of time that each of those individuals have spent, and the value that they could bring to companies that select us in terms of procurement methodology, that sort of thing.</p> <p>8 Certainly highlight our patents, innovation, modular approach of the application, flexibility of the application.</p> <p>11 Q. Is the modular approach and flexibility -- are those part of the same thing, or are those 2 different points?</p> <p>14 A. It's 2 different points.</p> <p>15 Q. Any other differentiators that you use in the marketplace?</p> <p>17 A. Those -- those are the high-level differentiators.</p> <p>19 I mean, there's times I'm sure where there's other differentiators we may have to get into in terms of how -- which, you know, within the application works as compared to somebody else's.</p> <p>23 Q. With respect to length of time, how long has ePlus been in the e-procurement catalog management business?</p>	<p>1 A. Was ePlus formed?</p> <p>2 Q. Yes.</p> <p>3 A. No.</p> <p>4 Q. They were preexisting, but they bought these assets to add to their existing business?</p> <p>6 A. Yes, that's correct.</p> <p>7 Q. Prior to acquiring the procure net assets, was ePlus in the e-procurement business?</p> <p>9 A. From a selling or licensing the application, no, not that I'm aware of.</p> <p>11 Q. Would there be another way that they could have been involved in e-procurement?</p> <p>13 A. I think they had a solution that allowed customers to purchase their hardware directly from them, but it was not necessarily a sophisticated system.</p> <p>17 Q. When did procure net enter the electronic procurement business?</p> <p>19 A. Well, I joined a year prior to the acquisition of ePlus, so I don't know how long procure net was -- was actually in business as a stand-alone entity.</p> <p>23 Q. When you talk about the differentiator that ePlus has been doing this a long time, did you tell customers, our employees have been in the</p>

Farber, Kenneth, Gary - Ga(b)(6)(B)(iv) is available 12/16/2009 12:00:00 PM

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

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Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

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Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

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Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

20 [REDACTED] 1970s	117 [REDACTED] 1968?
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Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

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Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

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Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

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Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

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Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

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Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

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Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

153 [REDACTED] body	155 [REDACTED] of
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Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

165 [REDACTED]	167 [REDACTED]
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Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

[REDACTED]	169	[REDACTED] Holdings	171
[REDACTED] 2005-2006 financials.	170	[REDACTED] record	172

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

[REDACTED]	[REDACTED]
[REDACTED] testimony	[REDACTED]

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

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Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

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20 [REDACTED] 2009-08-09 12:00:00 AM to 182	182 20 [REDACTED] 2009-08-09 12:00:00 AM to 184

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

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Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

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Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

1 UNITED STATES DISTRICT COURT 2 EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 ePLUS, INC.,) 5 Plaintiff,) 6 v.) No. 3:09cv620 7 LAWSON SOFTWARE, INC.,) 8 Defendant.) 9 CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER 10 Washington, D.C. 11 Thursday, December 17, 2009 12 30(b)(6) Videotape Continued Deposition of ePLUS, 13 INC., by and through its designee, KENNETH GARY 14 FARBER, and in his individual capacity, called for 15 examination by counsel for Defendant in the 16 above-entitled matter, the witness being duly sworn 17 by CHERYL A. LORD, a Notary Public in and for the 18 District of Columbia, taken at the offices of 19 TROUTMAN SANDERS LLP, 401 9th Street, Suite 1000, 20 Washington, D.C., at 8:52 a.m., and the proceedings 21 being taken down by Stenotype by CHERYL A. LORD, RPR, 22 CRR. 23 24 25	201 203
202	204

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 EXHIBITS CONTINUED</p> <p>2 LAWSON EXHIBIT NO. PAGE NO.</p> <p>3</p> <p>4 EPLUS0913891-904 404</p> <p>5 39 February Management Meeting</p> <p>6 2009, ePLUS0538719-38 406</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>205</p> <p>1 and, having been duly sworn by the Notary Public, was</p> <p>2 examined and testified as follows:</p> <p>3</p> <p>4 MR. ROBERTSON: Dan, I just have a quick</p> <p>5 question.</p> <p>6 The videographer just indicated that he</p> <p>7 believed this was a 30(b)(6) deposition and a</p> <p>8 personal deposition as well.</p> <p>9 Mr. Farber was noticed personally?</p> <p>10 MR. McDONALD: I think there was a</p> <p>11 stipulation going both directions that if there's a</p> <p>12 30(b)(6), people could also be deposed in their</p> <p>13 individual capacity.</p> <p>14 MR. ROBERTSON: Okay. I think I recall</p> <p>15 that. I just -- so were you doing both yesterday</p> <p>16 simultaneously?</p> <p>17 MR. McDONALD: Yeah, I guess so.</p> <p>18 MR. ROBERTSON: Okay. All right.</p> <p>19</p> <p>20 FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT</p> <p>21 BY MR. McDONALD:</p> <p>22 Q. Morning, Mr. Farber.</p> <p>23 A. Good morning.</p> <p>24 Q. I wanted to go back through that list of</p> <p>25 prospects that you mentioned yesterday that you said</p>
<p>1 PROCEEDINGS</p> <p>2</p> <p>3 THE VIDEOGRAPHER: Today is Thursday,</p> <p>4 December 17th, 2009. The time is approximately 8:52</p> <p>5 AM.</p> <p>6 We are at the law office of Troutman</p> <p>7 Sanders LLP location in Minneap-- excuse me --</p> <p>8 Washington, D.C. This is the commencement of the</p> <p>9 video deposition of ePlus Inc. pursuant to rule</p> <p>10 30(b)(6) by their designate, Kenneth G. Farber, and</p> <p>11 Kenneth G. Farber personally.</p> <p>12 My name is Brian Ciccone, and I am the</p> <p>13 video technician.</p> <p>14 Will the attorneys please note their</p> <p>15 appearances for voice identification.</p> <p>16 MR. McDONALD: For Lawson Software, Daniel</p> <p>17 McDonald, of Merchant & Gould.</p> <p>18 MR. ROBERTSON: And for ePlus Inc., Scott</p> <p>19 Robertson, of Goodwin Procter LLP.</p> <p>20 THE VIDEOGRAPHER: Will the court reporter</p> <p>21 please swear in the witness.</p> <p>22</p> <p>23 Whereupon,</p> <p>24 KENNETH GARY FARBER</p> <p>25 was called as a witness by counsel for Defendant,</p>	<p>206</p> <p>208</p> <p>1 you were up against Lawson with.</p> <p>2 A. Okay.</p> <p>3 Q. And I wanted to clarify for one thing the</p> <p>4 timing on when these bids -- bidding activities took</p> <p>5 place.</p> <p>6 For Gannett, when were you up against</p> <p>7 Lawson?</p> <p>8 A. For Gannett, that was this past year,</p> <p>9 2009, when that had occurred.</p> <p>10 Q. For Indalex, when did that happen?</p> <p>11 A. I think that might have been within the</p> <p>12 last year to 18 months.</p> <p>13 Q. So 2008 to 2009?</p> <p>14 A. I believe so, best of my recollection.</p> <p>15 Q. When did you go up against Lawson for</p> <p>16 Novant?</p> <p>17 A. Same time period.</p> <p>18 Q. 2008?</p> <p>19 A. I believe so.</p> <p>20 Q. When did --</p> <p>21 A. 2008, 2009.</p> <p>22 Q. Early 2009?</p> <p>23 A. I'd have to check, but, yeah, I believe</p> <p>24 so.</p> <p>25 Q. Was that sometime before the lawsuit</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

209	211
<p>1 anyway?</p> <p>2 A. Yes.</p> <p>3 Q. What was the timing of the Cleveland</p> <p>4 Clinic bid?</p> <p>5 A. Cleveland Clinic I also believe</p> <p>6 approximately the same time frame.</p> <p>7 Q. 2008, early -- first half of 2009?</p> <p>8 A. Best I recall.</p> <p>9 Q. For BlueCross BlueShield of North</p> <p>10 Carolina, what was the timing?</p> <p>11 A. I think that was also 2008.</p> <p>12 Q. For XM Radio, what was the timing?</p> <p>13 A. 2008.</p> <p>14 Q. For Hanes, what was the timing?</p> <p>15 A. Hanes, I believe, was the latter part of</p> <p>16 2006.</p> <p>17 Q. Wolters Kluwer, what was the timing?</p> <p>18 A. 2009.</p> <p>19 Q. Do you believe that from time to time</p> <p>20 prior to 2008 you did go up against Lawson for</p> <p>21 customers other than Hanes for e-procurement?</p> <p>22 A. I could have, or as a company, we could</p> <p>23 have. I'm -- I'm not sure that I recall, you know,</p> <p>24 off the top of my head if we did what the</p> <p>25 circumstances were exactly.</p>	<p>1 A. M-hm.</p> <p>2 Q. -- what would you tell that that customer?</p> <p>3 A. Well, I think the message to my sales</p> <p>4 folks or clients would be the same as I stated</p> <p>5 yesterday in terms of the differentiators.</p> <p>6 Q. So your message wouldn't be different for</p> <p>7 Lawson than it is when you're competing against other</p> <p>8 competitors?</p> <p>9 A. I don't believe so. We try to stay out of</p> <p>10 the feature function comparisons and bring in a level</p> <p>11 higher, more at a business level.</p> <p>12 Q. Does ePlus compete against some of its</p> <p>13 licensees like Ariba and SAP?</p> <p>14 A. Sure.</p> <p>15 Q. And specifically, with the procure plus</p> <p>16 and content plus products?</p> <p>17 A. Yes.</p> <p>18 Q. Again, do you have basically the same</p> <p>19 response to customers when you're trying to</p> <p>20 differentiate yourself?</p> <p>21 A. I do.</p> <p>22 Q. Is that what you tell your salespeople to</p> <p>23 do as well?</p> <p>24 A. I try.</p> <p>25 Q. Are there any competitors of procure plus</p>
210	212
<p>1 Q. Is it your sense that in 2008, the</p> <p>2 competition for Lawson escalated with respect to</p> <p>3 ePlus?</p> <p>4 A. I think that during that time frame, we --</p> <p>5 we were seeing more of -- of Lawson in accounts.</p> <p>6 Q. Why do you think that is?</p> <p>7 A. Just by the number of accounts that I was</p> <p>8 privy to within that period.</p> <p>9 Q. Okay. Maybe my question was unclear.</p> <p>10 What I'm asking is, do you have an</p> <p>11 understanding as to why it is you saw more of Lawson</p> <p>12 in 2008 than you had previously?</p> <p>13 A. No, I don't.</p> <p>14 Q. Has ePlus developed a sales message to</p> <p>15 convey to prospects when you're selling up against</p> <p>16 Lawson for differentiating itself from Lawson?</p> <p>17 A. Trying to think if we did or didn't. I</p> <p>18 don't -- I don't think we did. We may have, but I</p> <p>19 don't know.</p> <p>20 Q. Do you have an understanding -- well, let</p> <p>21 me put it this way.</p> <p>22 If a customer asks you, well, Lawson is up</p> <p>23 against your procure plus and content plus products,</p> <p>24 give me some reasons why we should use ePlus instead</p> <p>25 of Lawson --</p>	<p>1 and content plus who have products that you try to</p> <p>2 differentiate from based on features and function?</p> <p>3 A. I think there may have been times where</p> <p>4 prospects would -- would get down to a certain level</p> <p>5 and ask for those, you know, differentiators.</p> <p>6 Q. Was it -- absent a customer actually</p> <p>7 asking that specific question, has it ever been part</p> <p>8 of your sales pitch to differentiate ePlus's procure</p> <p>9 plus and content plus products from competitor</p> <p>10 products based on features or functions?</p> <p>11 A. We may have in responses to proposals.</p> <p>12 You know, I'd have to look at specific ones to see.</p> <p>13 Depends on the sales situation, I suppose.</p> <p>14 Q. Well, absent a customer either asking the</p> <p>15 question --</p> <p>16 A. M-hm.</p> <p>17 Q. -- verbally or in effect through a request</p> <p>18 for proposal, has it ever been part of your standard</p> <p>19 sales pitch to differentiate based on feature or</p> <p>20 function?</p> <p>21 A. Our standard sales pitch, no, our Web</p> <p>22 materials, no, we don't, you know, list those</p> <p>23 comparisons publicly. Whether somebody inserted</p> <p>24 slides to do something specific for a customer I</p> <p>25 don't have recollection of.</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

213	215
<p>1 Q. When ePlus has gone head to head against 2 Lawson for procure plus or content plus, has it ever 3 in response to a customer inquiry distinguished the 4 products -- the Lawson products based on features or 5 functions?</p> <p>6 A. We may have. I don't have immediate 7 recollection of those presentations or documents that 8 may or may not have been presented.</p> <p>9 Q. Do you have an understanding as to whether 10 there are differences in features and function 11 between the ePlus procure plus and content plus 12 products and the Lawson products?</p> <p>13 A. I suppose there's always going to be 14 nuances. Specific differences don't come -- come to 15 my mind. I haven't looked at the application, you 16 know, other than Website stuff, so --</p> <p>17 Q. Do you know what the names are of any of 18 the Lawson products that have similar -- generally 19 similar function?</p> <p>20 A. Well, I know there's a Lawson purchasing 21 module. I know there's a content. I don't know what 22 the official names are that are referred to. I don't 23 recall the official names. I know I looked at it 24 and --</p> <p>25 Q. When you say you looked at it, how did you</p>	<p>1 BY MR. McDONALD: 2 Q. Mr. Farber, you've been handed what was 3 marked Lawson exhibit 20.</p> <p>4 A. Okay.</p> <p>5 Q. Do you recognize this document?</p> <p>6 A. Not offhand, but if you give me a minute, 7 I'll look through it.</p> <p>8 Q. Sure.</p> <p>9 (Pause.)</p> <p>10 A. Okay.</p> <p>11 BY MR. McDONALD: 12 Q. Have you had a chance to review it?</p> <p>13 A. Yeah, briefly, sure.</p> <p>14 Q. Okay. Do you recognize exhibit 20?</p> <p>15 A. Well, it appears to me to be a 16 presentation of some of the products and services 17 that we offer.</p> <p>18 Q. And your name and Will Thomas's names are 19 on the first page of this document.</p> <p>20 Right?</p> <p>21 A. Apparently, yes.</p> <p>22 Q. Is this a PowerPoint presentation that you 23 did?</p> <p>24 A. It appears so, yes.</p> <p>25 Q. And the title of it is, ePlus briefing</p>
214	216
<p>1 look at it?</p> <p>2 A. Well, I looked at the Website obviously.</p> <p>3 Q. The Lawson Website?</p> <p>4 A. Yeah.</p> <p>5 Q. What is your understanding as to how long 6 Lawson has had and sold a purchasing module?</p> <p>7 A. Not sure I recall how long they've had the 8 module and what generations of the module have 9 occurred.</p> <p>10 Q. Do you have an understanding at least that 11 it was before 2008 that they had one?</p> <p>12 A. I would -- I would suspect they did. If 13 we competed in some form or function in 2006, tail 14 end of 2006 with Hanes, I would -- I would have to 15 surmise that they did.</p> <p>16 Q. Okay. So at least by the time you were up 17 against Lawson in 2006 going after Hanes, you believe 18 they had -- Lawson had a purchasing module at least 19 by then?</p> <p>20 A. I would believe.</p> <p>21 MR. McDONALD: Let's mark this as the next 22 exhibit, please.</p> <p>23 (Lawson Exhibit No. 20 24 was marked for 25 identification.)</p>	<p>1 September 2008. 2 Correct?</p> <p>3 A. Yes.</p> <p>4 Q. And then it's got the ePlus logo on the 5 top right corner of at least the first page?</p> <p>6 A. M-hm.</p> <p>7 Q. Say yes or no.</p> <p>8 A. Yes, sir.</p> <p>9 Q. What was the purpose of this document?</p> <p>10 A. I have no clue at the time. It could have 11 been prepared for a number of different reasons.</p> <p>12 Q. Do you do briefings about ePlus as a 13 company from time to time?</p> <p>14 A. Yes, certainly.</p> <p>15 Q. You do that sometimes with Mr. Thomas, the 16 senior vice president?</p> <p>17 A. At times.</p> <p>18 Q. Who do you brief?</p> <p>19 A. It could have been for an internal call 20 with my team. It could have been for a seminar. It 21 could have been for a prospect.</p> <p>22 Q. So as you look at this document, do you 23 think it could have been for use for all 3 of those 24 purposes?</p> <p>25 A. Well, if you give me a couple minutes --</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

217	219
<p>1 Q. Sure.</p> <p>2 A. -- I'll go through it in a little bit more</p> <p>3 detail.</p> <p>4 (Pause.)</p> <p>5 A. Possibly could have been. It looks fairly</p> <p>6 high-level, so it could have been used for --</p> <p>7 BY MR. McDONALD:</p> <p>8 Q. You don't see any internal company</p> <p>9 confidential information in this -- as you're</p> <p>10 reviewing it in any way, do you?</p> <p>11 A. It says, ePlus proprietary and</p> <p>12 confidential.</p> <p>13 Q. Oh, okay.</p> <p>14 Well, was that a good indication, then,</p> <p>15 whether that would have just been used internally or</p> <p>16 whether you would have used it outside the company?</p> <p>17 A. No, not necessarily.</p> <p>18 Q. Okay. So you might mark it that way even</p> <p>19 though you might be at a public seminar?</p> <p>20 A. Exactly.</p> <p>21 Q. Okay.</p> <p>22 A. This looks a little lengthy to be doing at</p> <p>23 a public seminar, but --</p> <p>24 Q. Did you prepare exhibit 20 yourself?</p> <p>25 A. Probably not.</p>	<p>1 A. That's correct.</p> <p>2 Q. Went from about 830 million to about --</p> <p>3 was it 660?</p> <p>4 A. 600 and change.</p> <p>5 Q. 600 --</p> <p>6 A. Yes.</p> <p>7 Q. -- million and change. Okay.</p> <p>8 So that was a decline in sales of over 200</p> <p>9 million dollars?</p> <p>10 Correct?</p> <p>11 A. About 150 I think it was or somewhere</p> <p>12 thereabouts.</p> <p>13 Q. Well, if it went from 830 to --</p> <p>14 A. I know.</p> <p>15 Q. -- 150 -- about 680.</p> <p>16 Is that -- is that right?</p> <p>17 A. Well, if it was 680 and it was 800, it's a</p> <p>18 difference of 120.</p> <p>19 Q. Well, I thought you said it was 830</p> <p>20 million or so.</p> <p>21 A. I -- to the best of my recollection, it</p> <p>22 was, but --</p> <p>23 Q. Okay.</p> <p>24 A. It would be in the -- in our public</p> <p>25 documents --</p>
218	220
<p>1 Q. Who probably prepared it?</p> <p>2 A. It could have been prepared by a</p> <p>3 combination of Will Thomas and Jeff Pinkerton, our</p> <p>4 marketing department.</p> <p>5 Q. Can you turn to the second page of exhibit</p> <p>6 20.</p> <p>7 A. Certainly.</p> <p>8 Q. This is a company overview.</p> <p>9 Right?</p> <p>10 A. Yes.</p> <p>11 Q. Now, the third bullet point down says, 800</p> <p>12 million-plus in revenue; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. This is as of September of '08.</p> <p>15 Correct?</p> <p>16 A. That's what it says, yes.</p> <p>17 Q. So was that for the fiscal year ending</p> <p>18 March of 2008 that you had over 800 million in</p> <p>19 revenue?</p> <p>20 A. I don't remember if it was fiscal year '07</p> <p>21 or '08, but it was our last publicly announced</p> <p>22 revenue numbers, which I think that year was maybe</p> <p>23 830 million.</p> <p>24 Q. So revenues went down from the year-ending</p> <p>25 March of '08 to the year-ending March of '09?</p>	<p>1 Q. Okay.</p> <p>2 A. -- our annual reports.</p> <p>3 Q. All right.</p> <p>4 A. But there was a decline.</p> <p>5 Q. What do you attribute the decline to?</p> <p>6 A. Well, the decline was basically the state</p> <p>7 of what I explained yesterday. ePlus was -- was not</p> <p>8 unscathed as most companies in terms of the change of</p> <p>9 economy and the downsize in purchasing mainly</p> <p>10 attributed to, you know, the way people were driving</p> <p>11 their capital expenses and just holding onto their</p> <p>12 funds and their cash, so --</p> <p>13 Q. Did the market as a whole for the types of</p> <p>14 products that ePlus sells also decline during that</p> <p>15 same time frame?</p> <p>16 A. In some areas there's multiple lines of</p> <p>17 business, so some areas, yes.</p> <p>18 Q. Did the sales in your division</p> <p>19 specifically that includes plus -- or content plus</p> <p>20 and procure plus, did -- did your sales revenues</p> <p>21 decline from fiscal 2008 to fiscal 2009 ending in</p> <p>22 March?</p> <p>23 A. No, I don't recall a variation best of my</p> <p>24 recollection.</p> <p>25 Q. So didn't go up or down much one way or</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

221	223
<p>1 the other?</p> <p>2 A. Within boundaries. I mean I think it</p> <p>3 could have been plus or minus a little bit but</p> <p>4 nothing that I recall being that tangible.</p> <p>5 Q. Most of ePlus's revenues are in the</p> <p>6 value-added reseller area; is that right?</p> <p>7 A. At the top end of revenue, yes, that's</p> <p>8 correct.</p> <p>9 Q. The top end being the number that would</p> <p>10 correlate to this 800 million-plus figure.</p> <p>11 Right?</p> <p>12 A. Yes.</p> <p>13 Q. That's where ePlus sells customers</p> <p>14 computer hardware and software mostly; is that right?</p> <p>15 A. It's where we provide computer hardware,</p> <p>16 computer software. We make as I said earlier or</p> <p>17 yesterday our software available to our clients as</p> <p>18 well that are purchasing from us as a driver to gain</p> <p>19 more business.</p> <p>20 Q. Does ePlus use the information on page 2</p> <p>21 of exhibit 20 here talking about how it's been public</p> <p>22 since '96, 800 million-plus in revenue over 2700</p> <p>23 customers, over 700 employees, industry leader,</p> <p>24 growing market position -- does it use all of that</p> <p>25 basically to convey to customers that ePlus is a</p>	<p>1 A. It's in response to what our -- what our</p> <p>2 customers always ask, so it's included in there. I</p> <p>3 don't know if that's necessarily the driving forces.</p> <p>4 To some companies, it's of importance, and others</p> <p>5 it's less importance, but, yeah, I mean, we certainly</p> <p>6 want to say that the company as a whole has been</p> <p>7 around a while.</p> <p>8 Q. And is going to be around for a while</p> <p>9 longer.</p> <p>10 Right?</p> <p>11 A. We hope so.</p> <p>12 Q. Right?</p> <p>13 A. You know, that would be a forward-looking</p> <p>14 statement.</p> <p>15 Q. Right.</p> <p>16 Could you turn to the page -- it's about</p> <p>17 the seventh page in, the last 4 digits of the ePlus</p> <p>18 number are 9865.</p> <p>19 A. Certainly. Okay.</p> <p>20 Q. This slide has the heading, software</p> <p>21 solutions.</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. Is this slide and the bullet points listed</p> <p>25 there, are those the product areas you have</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

225	227
<p>1 were going to use our document management system to 2 do payables processing and provided it as an 3 offering, and then have since moved in a different 4 direction.</p> <p>5 Q. Was it your decision at least in part to 6 stop having a separate division for payables 7 processing?</p> <p>8 A. It wasn't a division. An application, 9 yes.</p> <p>10 Q. Okay. Why did you drop payables 11 processing as an application?</p> <p>12 A. I think it was -- it was more a matter of 13 resources that we had to put on the process or the -- 14 or the program, and other priorities.</p> <p>15 Q. Over the last 4 years, have there been any 16 other applications or categories within your group 17 that at one time existed but do not exist any longer 18 other than payables processing?</p> <p>19 A. To the best of my recollection, I don't -- 20 I don't believe so.</p> <p>21 Q. Can you turn 2 pages later to the page 22 ending in 9867, please.</p> <p>23 A. Okay.</p> <p>24 Q. This is under the heading, approach and 25 target market.</p>	<p>1 second bullet point here?</p> <p>2 A. I don't necessarily know about the second 3 bullet point, but it could apply to the first and 4 latter third bullet point.</p> <p>5 Q. And I'm sorry.</p> <p>6 I don't recall whether there are any other 7 divisions other than VAR, your software division, and 8 leasing.</p> <p>9 Was there another one?</p> <p>10 A. There is a leasing value-added reselling 11 business, and our supply chain solutions are the 12 main --</p> <p>13 Q. Those are the 3. Okay.</p> <p>14 And the second bullet point, it says, 15 quote: Our prospects are experienced users of spend 16 management and have previously deployed other 17 solutions in the past.</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. So spend management, does that indicate to 21 you that this is talking about your division in 22 particular or not?</p> <p>23 A. No.</p> <p>24 Spend management -- there's -- there's a 25 lot of acronyms in our industry. Earlier in the</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 have been for a specific targeted purpose of somebody 2 that was interested in that, so I don't -- I don't 3 know.</p> <p>4 Q. Okay. Do Infor and Microsoft compete in 5 your division, or do they compete with VAR, or what?</p> <p>6 A. Yeah.</p> <p>7 I don't look at Microsoft as -- as 8 competing with us. So, you know, I don't know the 9 context of why Microsoft may have been in this 10 presentation.</p> <p>11 Q. Actually I guess this bullet point isn't 12 necessarily listing competitors, is it?</p> <p>13 A. It just says, other solutions.</p> <p>14 Q. Right.</p> <p>15 So is the point of this that you can sell 16 your products to companies who have deployed 17 solutions from Ariba, Lawson, Microsoft, and the 18 other listed companies here?</p> <p>19 A. Certainly. And it could be any number of 20 products that -- that they may have installed, so --</p> <p>21 Q. Does the value-added reseller division of 22 ePlus sell equipment to companies that use Lawson 23 software?</p> <p>24 A. I would assume they do.</p> <p>25 Q. On the VAR side of the business, do</p>	<p>229</p> <p>1 what, quote, solution you're talking about there as 2 an example anyway that Lawson has provided to your 3 prospects?</p> <p>4 A. You know, as I said earlier, it says, our 5 prospects are experienced users.</p> <p>6 Right?</p> <p>7 So -- and not knowing the audience, I 8 don't know the context by which this was being 9 presented at that time in 2008. It could have been 10 somebody that had an Ariba procurement system, a 11 Lawson procurement or accounting system, or inventory 12 management, et cetera, et cetera, so I don't -- it's 13 hard for me to suggest or surmise the context by 14 which this was put together and for what exact 15 purpose, an intent of that bullet.</p> <p>16 Q. So can you tell me for example whether the 17 intent here is to indicate that ePlus is trying to 18 sell products that would complement these previously 19 deployed solutions of other companies, or replace the 20 solutions previously deployed for customers?</p> <p>21 A. I think you're -- you're asking me a 22 question I don't have an answer to.</p> <p>23 Q. Okay. Well, who would know more than you 24 about this presentation when your name is on it?</p> <p>25 A. That's a good question. The only other</p>	<p>231</p>
<p>1 customers communicate to ePlus about what they need 2 the computer hardware and software to do 3 specifically?</p> <p>4 A. At times, not always.</p> <p>5 Q. Sometimes they just say, I need 2 of these 6 and one of those?</p> <p>7 A. Exactly.</p> <p>8 Q. Other times they come to you and say, 9 here's -- here are my needs, can you help me 10 determine what's the right hardware and software I 11 need?</p> <p>12 A. At times.</p> <p>13 Q. Do you know whether or not ePlus on its 14 VAR side has installed products at customers who 15 specifically were using Lawson's purchasing module or 16 not?</p> <p>17 A. Unaware of any.</p> <p>18 Q. You said, unaware?</p> <p>19 A. I'm unaware.</p> <p>20 Q. Is that a conversation you ever had with 21 anybody on the VAR side, that sort of conversation 22 about competitor products?</p> <p>23 A. No, not that I recall specifically.</p> <p>24 Q. So with respect to Lawson in this bullet 25 point, what -- can you give me an understanding of</p>	<p>230</p> <p>1 person's name on it is Will Thomas, so whether it was 2 possibly him, I don't know.</p> <p>3 Q. When ePlus is aware of a prospect that has 4 a Lawson purchasing module -- let me back up a little 5 bit.</p> <p>6 A. Sure.</p> <p>7 Q. Do you know whether or not it's happened 8 that a prospect uses a Lawson purchasing module but 9 they're looking to add functionality for example in 10 catalog management?</p> <p>11 A. I'm sure that's occurred.</p> <p>12 Q. When that's occurred, is ePlus -- I'll 13 withdraw that.</p> <p>14 When that has occurred, does ePlus try to 15 convey to the prospect that ePlus does have a catalog 16 management product that will work together with the 17 Lawson purchasing module?</p> <p>18 A. I don't know if it was -- has been 19 conveyed specifically with Lawson. I know that we 20 have done that with -- with other systems in the 21 past.</p> <p>22 Q. Based on your communications with 23 salespeople, do you think it is true that if they 24 encountered a prospect who had a Lawson purchasing 25 module that was looking to add catalog content</p>	<p>232</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

233	235
<p>1 management functionality that ePlus would try to find 2 a way to communicate to that customer that, yes, we 3 can sell you our product, and it will be compatible 4 with Lawson?</p> <p>5 A. Well, our salespeople look at things 6 agnostically, so if there's something that they think 7 they could sell, I'm sure they would sell it or try 8 to sell it.</p> <p>9 Q. And that's true even in cases where the 10 prospect had a Lawson purchasing module?</p> <p>11 A. It may very well be true.</p> <p>12 Q. If you turn to the next page of exhibit 13 20, please.</p> <p>14 A. Certainly.</p> <p>15 Q. This page has the heading, integrated 16 solutions.</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Now, are all the products that are 20 described on this page products that are sold by your 21 division?</p> <p>22 A. Well, they're not all products, but, yes. 23 It's part of my division.</p> <p>24 Q. Okay. Let's walk through. 25 Which of these 5 big boxes on the page</p>	<p>1 term that we use that has a connotation of creating 2 of the catalog, creating of the -- or preparation 3 of -- of the interaction with the systems and a 4 client's suppliers.</p> <p>5 Q. So it says, enabling suppliers to put in 6 catalog information for example into the customer's 7 system one way or the other?</p> <p>8 A. That may be one example.</p> <p>9 Q. Then the upper right corner above, spend 10 analysis, it says, quote: Use them together or 11 augment and support applications already in place, 12 quote.</p> <p>13 Do you see that?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Does that mean that any of these 5 blocks 16 here could be a block that the customer may have 17 already in place from some other vendor?</p> <p>18 A. It -- it could potentially mean that, 19 yes.</p> <p>20 Q. And ePlus will sell the other blocks to 21 make the system whole to the customer's desire?</p> <p>22 A. I believe so.</p> <p>23 Q. So is supplier enablement -- is that box 24 basically correlated to the product information 25 management area?</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 Right?</p> <p>2 A. Correct.</p> <p>3 Q. And then below that, are there some logos</p> <p>4 for some customers of ePlus that use procure plus?</p> <p>5 A. M-hm, yes.</p> <p>6 Q. And so Hanes' Brands Inc. is one of them.</p> <p>7 Right?</p> <p>8 A. I see that.</p> <p>9 Q. Is that the Hanes that you mentioned that</p> <p>10 you were up against Lawson for in 2006?</p> <p>11 A. I believe so.</p> <p>12 Q. So did ePlus beat out Lawson for that</p> <p>13 Hanes business in 2006?</p> <p>14 A. Well, if I believe that we were to the</p> <p>15 best of my recollection competing and it's here, I</p> <p>16 could only assume -- and it is an assumption on my</p> <p>17 part -- that we beat Lawson in that area.</p> <p>18 Hanes is a big organization.</p> <p>19 Could they be running Lawson procurement</p> <p>20 in another area?</p> <p>21 Possibly.</p> <p>22 Q. And under the logos in the e-procurement</p> <p>23 box, it says, quote, provided since 1983, quote.</p> <p>24 Do you see that?</p> <p>25 A. I see the bullet, yes.</p>	<p>237</p> <p>1 Q. So do you believe this '83 date goes to</p> <p>2 the people at Procure Net and their history?</p> <p>3 A. I believe so.</p> <p>4 Q. And the people at Procure Net, do you know</p> <p>5 whether they were at Fisher in 1983 or not, at least</p> <p>6 some of them?</p> <p>7 A. I don't know.</p> <p>8 Q. You see the reference a couple bullet</p> <p>9 points before -- below that one to sixth-generation</p> <p>10 software?</p> <p>11 A. Yes, I do.</p> <p>12 Q. I think you just mentioned this generation</p> <p>13 thing a moment ago.</p> <p>14 A. M-hm.</p> <p>15 Q. Can you walk through for me generally what</p> <p>16 these different generations are of procurement</p> <p>17 software.</p> <p>18 A. Our reference to generation is by the</p> <p>19 version number. So with every product, there's a</p> <p>20 version number, version 1, version 2, version 3, et</p> <p>21 cetera, all the way to version 6. And I think we are</p> <p>22 at version 6.9 now.</p> <p>23 Q. And that's for what, for the procure plus</p> <p>24 product?</p> <p>25 A. Correct.</p>	<p>239</p>
<p>1 Q. What is it that was provided beginning in</p> <p>2 1983 that relates to e-procurement?</p> <p>3 A. I think they were multiple generations of</p> <p>4 electronic procurement, certainly not by ePlus. So I</p> <p>5 think they're trying to put forth, you know, that</p> <p>6 there's some longevity both in the application,</p> <p>7 sourcing, et cetera.</p> <p>8 Q. So going back to 1983, would that be the</p> <p>9 expertise in e-procurement developed at Fisher</p> <p>10 Scientific that you're invoking there?</p> <p>11 A. I wouldn't know. I -- I know that there's</p> <p>12 been people involved in procurement, within the</p> <p>13 procurement organization that have been -- it's part</p> <p>14 of the longevity of people that I was talking about</p> <p>15 yesterday.</p> <p>16 Q. Well, ePlus has been around just since</p> <p>17 1990.</p> <p>18 Right?</p> <p>19 A. ePlus as a company, certainly.</p> <p>20 Q. Right.</p> <p>21 So did it have some predecessor company</p> <p>22 that dates back to 1983?</p> <p>23 A. Well, ePlus acquired Procure Net, and</p> <p>24 people at Procure Net were around for a long time</p> <p>25 prior to that.</p>	<p>238</p> <p>1 Q. Okay. So this is procure plus version</p> <p>2 6 --</p> <p>3 A. That's right.</p> <p>4 Q. -- 6 point something?</p> <p>5 A. Exactly.</p> <p>6 Q. Now, over on the right side under, content</p> <p>7 management, you see that's got the content plus brand</p> <p>8 name there?</p> <p>9 A. Yes, I do.</p> <p>10 Q. Then again there's some company logos</p> <p>11 listed?</p> <p>12 A. Yes.</p> <p>13 Q. And in bullet points, that one says,</p> <p>14 provided since 1990.</p> <p>15 Correct?</p> <p>16 A. Yes.</p> <p>17 Q. Now, do you have an understanding as to</p> <p>18 what the product was in 1990 that corresponds to</p> <p>19 content plus?</p> <p>20 A. It's similar to what we discussed in</p> <p>21 procurement. There are people that were involved</p> <p>22 since '90 in a facility that Procure Net had.</p> <p>23 Q. Yeah.</p> <p>24 This goes back to when Procure Net was</p> <p>25 founded then, or ePlus?</p>	<p>240</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

241	243
<p>1 A. Well, I don't know the exact date Procure 2 Net was founded, but Procure Net had electronic 3 procurement and content management, so just as I was 4 referring earlier about people that have been 5 involved since '83, there were people involved since 6 1990 in the content side.</p> <p>7 Q. Now, under this content management 8 heading, the third bullet point says, quote: 9 patented technology, quote.</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Do you know whether that refers to the 13 patents involved in this suit or some other patents?</p> <p>14 A. They may.</p> <p>15 Q. Do you know one way or the other?</p> <p>16 A. No, I don't, because there's other -- 17 other patents that are not in suit.</p> <p>18 Q. ePlus has other patents related to content 19 management.</p> <p>20 Correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Why did you list patented technology as a 23 bullet point under this heading here?</p> <p>24 A. Why it was listed specifically here, I 25 don't know. My -- my -- this could have been again</p>	<p>1 catalog management technology that may have been 2 being highlighted for -- for a certain reference 3 here.</p> <p>4 Q. Can you tell me generally what that 5 advanced catalog management is that you're referring 6 to here as patented?</p> <p>7 A. There's other patents that ePlus possesses 8 that deal with the syntax of information and how we 9 break down the syntax of information and 10 automatically create long descriptions and --</p> <p>11 Q. This has to do with building the content 12 for catalogs?</p> <p>13 A. It's one of the means by which somebody 14 could do that.</p> <p>15 Q. What are the advantages of that 16 technology?</p> <p>17 A. It -- it ultimately we believe helps the 18 catalog process by removing some of the nuances that 19 suppliers use. "Supply" may refer to something as a 20 quote mark in their description. Others may have the 21 word inch.</p> <p>22 So we basically have rules with synonyms 23 that associate the 2 and come up with a standardized, 24 normalized meaning for that term.</p> <p>25 Q. So all the different catalogs that are in</p>
242	244
<p>1 an opportunity that was more content-specific than 2 others and somebody was trying to highlight that here 3 for some reason.</p> <p>4 Q. In any event, there is no bullet point 5 under the e-procurement heading on this slide 6 indicating that that is, quote, patented technology, 7 quote.</p> <p>8 Correct?</p> <p>9 A. Not on this particular one.</p> <p>10 Q. Can you go ahead a few pages to the page 11 ending in numbers 9873.</p> <p>12 A. Okay.</p> <p>13 Q. Is this a page that generally indicates 14 the features of the procure plus product?</p> <p>15 A. It appears so. It's titled, procure plus.</p> <p>16 Q. Okay. The first feature listed is, quote: 17 advanced patented catalog management, quote.</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. So is that indicating that the procure 21 plus product will work with the content plus product 22 that provides advanced patented catalog management?</p> <p>23 A. Again, I don't know the context by which 24 this was being positioned and for what purpose.</p> <p>25 There are other patents in our -- in our</p>	<p>1 the database regardless of the supplier, they all use 2 similar language?</p> <p>3 A. Sometimes. Sometimes we use it and 4 sometimes clients don't want it, so --</p> <p>5 Q. Right, but I mean, that's the purpose of 6 the technology?</p> <p>7 A. So that there's similar vernacular 8 throughout the catalog.</p> <p>9 Q. You understand that those patents on the 10 syntax for the catalogs, those are not involved in 11 the Lawson case.</p> <p>12 Correct?</p> <p>13 A. I don't believe they were named.</p> <p>14 Q. You can put that one aside.</p> <p>15 A. Okay.</p> <p>16 Q. Give me a moment.</p> <p>17 A. Certainly.</p> <p>18 Q. I'll see if I can zip through this 19 one.</p> <p>20 A. Certainly.</p> <p>21 MR. McDONALD: Would you mark that as the 22 next exhibit, please.</p> <p>23 (Lawson Exhibit No. 21 24 was marked for 25 identification.)</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

1 BY MR. McDONALD: 2 Q. Mr. Farber, you've been handed what is 3 marked exhibit 21 entitled, procure plus 6.6 sales 4 data sheet. You can certainly review it all you'd 5 like. 6 I'd just like to -- my first question is 7 going to be, do you recognize this thing? 8 A. Not off the top of my head, but -- 9 Q. Okay. Can you take a look at it. 10 (Pause.) 11 A. Okay. 12 BY MR. McDONALD: 13 Q. Now that you've had a chance to look at 14 it, do you recognize this document? 15 A. No. 16 Q. It does -- is 6.6 -- is that one of the 17 versions of the sixth-generation procure plus 18 product? 19 A. I believe so, yes. 20 Q. Now, at the top, the print is kind of tiny 21 above that heading, but it looks like it says, 22 procure plus sell sheet October 21, 2002. 23 Do you see that at the very top? 24 A. I do. 25 Q. Is it true that at least in the 2002 time	245 1 Q. In 2002, was procure plus at version 6.6? 2 A. I'd have to go back and check. I -- 3 Q. At least were you in the version 6, that 4 sixth generation, by 2002? 5 A. I believe we were. 6 Q. You turn to the second page of this 7 document. 8 A. Yes. 9 Q. The fifth bullet point down, do you see 10 where it says, integration? 11 A. I do. 12 Q. Now, is this -- can you read that bullet 13 point to yourself, please. 14 A. Yes. 15 Q. All right. Does -- is this a statement 16 that could be used in sales pitches for procure plus 17 in 2002 indicating that procure plus can be 18 integrated with ERP and other IT systems from 19 companies including Lawson? 20 A. It does, yes. 21 Q. Now, going down below that black box, I 22 know it's hard to read in that black box, but looks 23 to me like this might be a glossary of terms that 24 start on the bottom of this second page of the 25 document.	247
246 1 frame, ePlus would develop documents to help its 2 salespeople sell procure plus? 3 A. ePlus, I don't believe that we had a 4 standard way at that time of providing information. 5 Q. Well, whether it's standard or not, I 6 mean, would this document be something that at least 7 is typical of something that ePlus would put together 8 to help its salespeople sell procure plus? 9 A. It looks like it would have come from 10 ePlus. It looks like -- I don't know where it was -- 11 was put together, so -- 12 Q. Are you familiar with the term sell 13 sheet? 14 A. No, I'm not familiar with the document. I 15 don't -- not familiar with the term. 16 I can surmise what sales sheet means, or 17 data sheet, but we don't use that -- that term today, 18 so I haven't heard it for some time that I'm aware 19 of, or didn't at any time, so -- 20 Q. Well, based on your experience at ePlus, 21 do you believe that an ePlus document that's called a 22 sales -- a sell sheet or a sales data sheet, that 23 would be a document put together to help people sell 24 ePlus products? 25 A. I believe so.	246 1 Do you see that? 2 A. The quick reference glossary? 3 Q. You can read that? 4 A. Mine is clear. 5 Q. Oh, okay. Good for you. 6 Mine is not as good as yours. 7 A. Okay. 8 Q. So it is called, quick reference glossary? 9 A. Yes. 10 Q. All right. You see the third and fourth 11 terms defined there in the glossary are catalog 12 management and content management? 13 A. I do. 14 Q. Does ePlus distinguish between catalog 15 management and content management? 16 A. I think a lot of times they're confused 17 and interchanged, so I mean, both are used in the 18 industry with little delineation at times between the 19 2, broad terms. 20 Q. Does ePlus try to distinguish the 2? 21 A. At times. 22 Q. Here the last sentence of the catalog 23 management definition says: Catalog management is a 24 subset of content management, quote. 25 Do you see that?	248

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

1 A. Where are you looking? 2 I'm sorry. 3 Q. The last sentence of the definition of 4 catalog management. 5 A. Okay. Yes, I see that. 6 Q. Do you think that's accurate in terms of 7 how ePlus tries to use these terms? 8 A. I can't say that I would -- you know, we 9 would condone the statements. 10 Q. In 2002, did ePlus look at catalog 11 management as a subset of content management? 12 A. No, I don't believe we did as a company. 13 Q. Do you have any idea of who put this 14 document together? 15 A. I really have no clue. 16 Q. Can you turn to the last page, please. 17 A. I can. 18 Q. What's the heading on that page? 19 A. Go to resources. 20 Q. All right. You see the third bullet point 21 is, product experts for procure plus? 22 A. Yes. 23 Q. And, you're the guy listed first there as 24 the product owner, Ken Farber, president, ePlus 25 systems.	249 1 A. No. 2 BY MR. McDONALD: 3 Q. How about 41906? 4 A. No, I don't have anything in the 4 series. 5 Q. Can you hand me that back, please. 6 I've got a different one here. I guess 7 that explains why your copy was better than mine. 8 A. Okay. 9 Q. Okay. I can now speak your language. 10 A. All right. Thank you. 11 Q. Can you turn to the page marked the last 5 12 digits 37217. 13 A. Yes. 14 Q. Now, in the middle of the page there, the 15 second box, what's in the second box? 16 A. The key differentiators. 17 Q. Okay. Is that the one that the first 18 bullet point says, e-procurement leader? 19 A. Okay. Yes. 20 Q. Okay. So we're in the same place, 21 because again I can't read the boxes -- 22 A. Okay. 23 Q. -- on my copy? 24 Over on the right side of that -- 25 underneath that box, the second bullet point down
250 1 A. Okay. 2 Q. Correct? 3 A. Yes. 4 Q. Does that refresh your recollection at all 5 as to whether you had some involvement in putting 6 exhibit 20 together? 7 A. No, that would give me no indication that 8 had any -- anything to do whatsoever with putting the 9 document together. My name is plastered on more 10 things than I care to know about and don't know 11 about. 12 Q. Can you turn to the page with the last 4 13 digits at the very bottom right, number 8584. 14 A. I'm looking on the same -- the same 15 document. 16 Right? 17 Q. That's correct. 18 A. And the last 4 digits were? 19 Q. 8584 in the very lowest right corner. 20 A. I don't -- I don't have -- 21 MR. ROBERTSON: We have a different 22 document. 23 BY MR. McDONALD: 24 Q. Do you have 140459? 25 MR. ROBERTSON: Nope.	250 1 says, quote: Supported by content plus and an ePlus 2 catalog, dash, 800,000 MRO IT office products items. 3 Do you see that? 4 A. I do. 5 Q. Can you tell me what that means in 6 English. 7 A. Okay. I think what -- what it means is 8 that -- well, it's a just a bullet, so I'm going to 9 surmise what it means, but my recollection is that at 10 that time we had processed catalogs for our clients 11 in the areas of MRO IT office supplies and probably 12 other categories and that we probably had done over a 13 period of time over 800,000 items. 14 Q. So ePlus had built up a catalog 15 electronically that had over 800,000 item 16 descriptions in it? 17 A. No, no. 18 It's not our catalog. It's catalogs that 19 we've built for our customers. We don't have a 20 catalog that we provide to customers for MRO, et 21 cetera. 22 Q. Okay. So I guess I was confused, because 23 it says, and on ePlus catalog. Makes it sounds like 24 there is a thing called an ePlus catalog there. 25 A. No.

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 I understand, but it's not.</p> <p>2 Q. Okay. What does MRO stand for?</p> <p>3 A. I think it's a term that refers to</p> <p>4 maintenance, repair, and operation.</p> <p>5 Q. That's just a category of products?</p> <p>6 A. It's a category of goods, yes.</p> <p>7 Q. Can you give me a couple of examples of</p> <p>8 what's in that?</p> <p>9 A. Electrical supplies, gates, gate valves,</p> <p>10 things of that -- that are referred to as indirect</p> <p>11 materials.</p> <p>12 Q. Things used in manufacturing?</p> <p>13 A. Correct.</p> <p>14 Q. Can you turn to the next page, please.</p> <p>15 A. Yes.</p> <p>16 Q. You see under the -- there's 2 subheadings</p> <p>17 there, hosted and enterprise.</p> <p>18 A. Yes.</p> <p>19 Q. What do those 2 terms mean?</p> <p>20 A. "Hosted" is an application that is</p> <p>21 maintained and run in the data centers of the</p> <p>22 companies that are selling them as a hosted</p> <p>23 application.</p> <p>24 Q. So if ePlus is selling, it would be hosted</p> <p>25 at ePlus?</p>	<p>253</p> <p>1 functionally competitive.</p> <p>2 Q. What made the Oracle product not</p> <p>3 functionally competitive in 2002?</p> <p>4 A. I have no recollection to know at that</p> <p>5 period of time what functionality was there or not</p> <p>6 there to recall those elements.</p> <p>7 Q. Do you have an understanding for any time</p> <p>8 between 2002 and now what functional differences</p> <p>9 there are or have been versus the Oracle product?</p> <p>10 A. I think one of the things if I go back to</p> <p>11 2002 Oracle or otherwise, I know that we at one point</p> <p>12 talked about 3-way matching, matching a requisition</p> <p>13 to an invoice to a purchase order, but a lot of</p> <p>14 electronic procurement systems did not have in that</p> <p>15 period of time but was important to customers, so</p> <p>16 that may be one indication of a functional aspect of</p> <p>17 the applications.</p> <p>18 Q. So you said, 3-way matching.</p> <p>19 Is that -- that's between the requisition,</p> <p>20 the purchase order, and an invoice?</p> <p>21 A. Correct.</p> <p>22 Q. What is it that customers wanted the</p> <p>23 system to be able to do functionally regarding that?</p> <p>24 A. Well, a 3-way match is just basically take</p> <p>25 the requisition price, take the purchase order price,</p>
<p>1 A. Or ePlus hosted a data center as an</p> <p>2 example.</p> <p>3 "Enterprise" typically refers to customers</p> <p>4 that have installed or want to install an application</p> <p>5 behind their -- what we call their firewall or within</p> <p>6 their data center that they operate and maintain.</p> <p>7 Q. And under, enterprise, the third and</p> <p>8 fourth bullet points refer to Oracle procurement and</p> <p>9 SAP procurement.</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. And at both of those, the italics next to</p> <p>13 them say, quote, not functionally competitive, hard</p> <p>14 to implement, doesn't really work, quote.</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. In the 2002 time frame, did ePlus try to</p> <p>18 sell against Oracle and SAP by emphasizing those 3</p> <p>19 points?</p> <p>20 A. Well, it's -- it's an internal document.</p> <p>21 I don't think that we would put that bullet point</p> <p>22 exactly in a presentation perhaps.</p> <p>23 Q. Okay.</p> <p>24 A. But it's saying that at that time whoever</p> <p>25 wrote the document didn't believe that they were</p>	<p>254</p> <p>1 and the invoice price that you were getting from the</p> <p>2 supplier and make sure that they match and there's no</p> <p>3 significant deviation.</p> <p>4 Historically, that process was managed</p> <p>5 either in different systems or partially was done</p> <p>6 manually. And they wanted a central system to create</p> <p>7 that level of functionality and integration.</p> <p>8 Q. In 2002, did procure plus have that</p> <p>9 functionality?</p> <p>10 A. I believe we did.</p> <p>11 Q. And you believe at least at some point,</p> <p>12 last 8 years, Oracle and SAP did not have that</p> <p>13 functionality?</p> <p>14 A. At some point, I believe they didn't.</p> <p>15 Q. Was -- or is the content plus product</p> <p>16 marketed to suppliers?</p> <p>17 A. There was a brief period of time that I</p> <p>18 think there was a concerted -- or I shouldn't say</p> <p>19 "concerted" -- but there was an effort to determine</p> <p>20 if we could market the product to suppliers.</p> <p>21 Q. What time period was that?</p> <p>22 A. Early to mid-2000s, I think.</p> <p>23 Q. First half of the decade, basically?</p> <p>24 A. I think so.</p> <p>25 Q. Was that effort successful?</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 A. Well, we're not doing it today, so I 2 suppose it wasn't. 3 Q. Was that -- were you involved that 4 decision to stop doing that? 5 A. Yeah, to not do it any further, yes. 6 Q. Was that because the revenues just weren't 7 there? 8 A. Yes. 9 MR. McDONALD: Why don't we take a break. 10 THE WITNESS: Sure. 11 THE VIDEOGRAPHER: The time is 12 approximately 9:54 AM. We're going off the video 13 record. Off the record. 14 (Recess.) 15 THE VIDEOGRAPHER: The time is 16 approximately 10:08 AM. We are back on the video 17 record. 18 (Lawson Exhibit No. 22 19 was marked for 20 identification.) 21 BY MR. McDONALD: 22 Q. Mr. Farber, you've been handed what's 23 marked exhibit Lawson 22. 24 That's an ePlus document entitled, procure 25 plus integrated processing -- integration processing.</p>	<p>257</p> <p>1 Q. Now, does that have a list of bullet 2 points as to the general groupings of what are 3 called, interface touch points? 4 A. Yes, that's what it appears to be, 5 correct. 6 Q. Can you explain generally what interface 7 touch points are? 8 A. Touch points are -- can be viewed a couple 9 different ways, but a touch point is -- from one 10 system to another system, we refer to that level of 11 integration as a touch point. So from an accounts -- 12 from a procurement to an accounts payable component 13 would be considered a touch point, just by example. 14 Q. So it's points in the process flow where 15 the system has to interact with some external system? 16 A. Correct. 17 Q. And it's got several touch-point groupings 18 here, the last one being general. 19 Correct? 20 A. Okay. Yes. 21 Q. The next page has got a graphic below the 22 heading, procure plus integration touch points. 23 Correct? 24 A. It says, procure plus integration. 25 Q. Does it also say "touch points" on yours?</p>	<p>258</p> <p>1 Correct? 2 A. Correct. 3 Q. Give you a chance to generally review this 4 document. 5 My question is, do you recognize it? 6 A. Yeah, I believe I do. 7 Q. What is it? 8 A. Appears to be a document that describes 9 the different types of integrations or examples of 10 integrations that can be done with the application. 11 Q. So integrations is basically connecting 12 the procure plus patent -- or system to other systems 13 and communicating with those other systems? 14 A. Correct. 15 Q. If you turn to the third page of the 16 document, the last 4 digits, 9273. 17 A. Yes. 18 Q. That's the page that has a heading, 19 introduction. 20 Correct? 21 A. Yes. 22 Q. And then the third subheading on the page, 23 integration process points general, do you see that 24 one? 25 A. I do.</p>	<p>259</p> <p>1 A. Oh, you're looking at the second bar? 2 Q. Yes. 3 A. I can barely read it, but, yes, I see it 4 now. 5 Q. Okay. Yeah. 6 And then below that, it's got a bunch of 7 boxes going down the center of the page with some 8 other boxes to the left and right. 9 Correct? 10 A. That's correct. 11 Q. What are the boxes going down the middle 12 of the page? 13 What do they represent? 14 A. Let's see, need catalog -- I believe they 15 may be summarizing the elements of process that takes 16 place in a system. 17 Q. Would those all be elements of the procure 18 plus process? 19 A. I think it could be a combination of 20 the -- of the procure plus and other system, but many 21 of the categories would appear to be from -- from the 22 procurement application. 23 Q. Okay. Well, it looked to me like the 24 graphic was trying to show procure plus processes 25 down the middle and then there would be these arrows</p>
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Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

261	263
<p>1 going in and out from procure plus, and those would 2 represent the touch points to external systems. 3 Is that how you look at this? 4 A. At a high level, yes. 5 Q. So you think it is fair that the boxes 6 down the middle of the page represent what's in 7 procure plus? 8 A. At a high level, yes. 9 I'd have to go further in the document to 10 see how each one is discussed, but at a high level, I 11 would agree. 12 Q. Can you turn to the page marked last 4 13 digits 9277. 14 A. Okay. 15 Q. The second heading here on this page is 16 the word general. 17 Correct? 18 A. Correct. 19 Q. Is this summarizing one category of the 20 integration interface touch points? 21 A. Yes. 22 Q. The first sentence under, general, says: 23 The distribution of item and vendor master records is 24 a common interface point between procure plus and the 25 corporate system, quote.</p>	<p>1 cost center, the account code structure that's used 2 for the processing of payments, everything you would 3 expect to see in a general ledger. 4 Q. Okay. But when you it says, item master, 5 does that mean it's got all that information like the 6 cost and the user for a particular item of some sort? 7 A. No. 8 It's not discussing the item here. 9 It's discussing their cost center and 10 account level general ledger controls of their 11 accounting system, not the items that you would 12 consider to be in a catalog, as an example. 13 Q. And you're talking about the file build 14 utility touch point. 15 Correct? 16 A. Yes, correct. 17 Q. But if we go 2 above that to the item 18 master create, slash, change touch point. 19 A. Yes. 20 Q. That one, the comments are, can be either 21 inbound or outbound. 22 Correct? 23 A. That's correct. 24 Q. So what would an external general ledger 25 or accounting system use an item master record for?</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

265	267
<p>1 A. Not if it's -- no, not -- not -- no -- not 2 in this context, it's not. 3 Q. What is a vendor master record? 4 A. The vendor master record again in these 5 type of back-office systems is a list of vendors that 6 are associated with account codes. 7 So as you're exchanging account code 8 information, there's a vendor name that's associated 9 with that for proper payment to the right vendor. 10 Q. Can you turn to the page marked last 4 11 digits 9281 in the lower right corner, please. 12 A. Yes. 13 Q. Does this page list the business to 14 business and vertical industry standards that procure 15 plus uses when it integrates or interfaces with other 16 systems? 17 A. Just give me a minute. Let me just review 18 the items here. 19 (Pause.) 20 A. This is a list of a third-party's 21 application called Web methods that's used for 22 integration, and I believe it was supplied by Web 23 methods so we could describe to clients what Web 24 methods is and what they do if they're not familiar 25 with it.</p>	<p>1 then Web method can in effect translate the 2 information into any of these listed standards for 3 other applications? 4 A. For certain functions that we perform. 5 Q. So that is true for certain applica-- 6 certain functions but not all of them -- 7 A. Correct. 8 Q. -- for procure plus? 9 MR. McDONALD: Please mark that as the 10 next exhibit. 11 (Lawson Exhibit No. 23 12 was marked for 13 identification.) 14 BY MR. McDONALD: 15 Q. Mr. Farber, you've been handed exhibit 23. 16 It's a document titled, e-procurement, 17 Indalex 3, slash, 2008. 18 Correct? 19 A. Yes, it is, yes. 20 Q. Indalex, that's a company you indicated 21 earlier as one that ePlus competed with Lawson on. 22 Correct? 23 A. Yes, yes. 24 Q. Do you have an understanding as to who 25 wound up getting that Indalex business?</p>

266	268

1 It does not identify how procure plus is
2 using them, because we don't use all these B2B
3 vertical -- what they refer to as B2B in vertical
4 standards.
5 THE COURT REPORTER: I'm sorry.
6 "Be" --
7 THE WITNESS: B2B.
8 THE COURT REPORTER: "Be to be"?
9 THE WITNESS: Yes, numeric 2.
10 MR. McDONALD: (Showing exhibit to the
11 court reporter.)
12 THE COURT REPORTER: Oh, B -- oh.
13 BY MR. McDONALD:
14 Q. Web method is some third-party service
15 product?
16 A. It's a product.
17 Q. Is it a product that Lawson interfaces
18 with -- or excuse me -- I'll withdraw that question.
19 Is it a product that the ePlus, procure
20 plus system can interface with?
21 A. It's a system or an application that ePlus
22 utilizes to connect to and integrate with other
23 systems.
24 Q. So the procure plus product has its own
25 standard way of communicating with Web method, and

1 A. I don't recall.
2 Q. Do you know it was not ePlus?
3 A. No, it was not ePlus.
4 Q. Okay. Do you recognize exhibit 23?
5 A. No, I don't.
6 Q. When ePlus is preparing to respond to a
7 request from a customer, does it put together from
8 time to time documents that may be drafts of how it's
9 going to respond to the request?
10 A. Do we put together drafts of how we plan
11 on responding?
12 Q. Yes.
13 A. Yes, certainly.
14 Q. Does this look like a draft document that
15 relates to the process of presenting the ePlus
16 solution to Indalex?
17 A. No, it actually doesn't to me.
18 Q. Why -- is there something about that that
19 indicates it's not such a thing?
20 A. I don't recall any document that we've
21 ever provided in a response to a customer that
22 provides, you know, one page, there's something here
23 on Indalex, the next page there's something here from
24 Washington state colleges, there's something here
25 from University of Florida, et cetera.

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

1 And typically, what we do is, we 2 protect -- I shouldn't say "protect" -- but we honor 3 the confidentiality of our -- of our clients, and in 4 our response to a proposal, we typically don't 5 provide this information unless we receive approval 6 from those customers, and as it relates to Indalex, 7 which is this is dated March of 2008, I really don't 8 know how this document was assembled in its source, 9 but we wouldn't be talking about things that occurred 10 in 2007, and we would be using more current 11 references, there's stuff that dates back to 2004. 12 So this -- I don't -- I've never seen the 13 document, nor do I understand how it was compiled and 14 for what purpose, because it really doesn't make 15 sense of anything that we utilize and provide to 16 customers. 17 Q. If you were going to try to figure out who 18 put this thing together, who would you talk to? 19 A. Oh, my gosh. 20 I would start with my own sales 21 organization, my own marketing organization. It's 22 not anything that we would have approved in a review 23 process to -- to go out anywhere. 24 Q. All right. That does remind me: Did you 25 have a chance to track down any of the information	269 1 they using Lawson beforehand, and are they using any 2 other systems. 3 So in regards to the integration within 4 those systems, in each instance, with the exception 5 of Devon Energy. Devon Energy we're not integrating 6 to Lawson at all. 7 In each of the other instances, we are 8 integrating with Lawson. And it's the Lawson as 9 I refer to it the back-office system, the 10 accounting components, general ledger codes, account 11 codes, things of that nature in each of those 12 instances. 13 So I think that's what I've been able to 14 ascertain thus far. 15 Q. Okay. Thank you. 16 Go ahead and put exhibit 23 aside. 17 A. This? 18 Oh, aside? 19 Q. Yeah. 20 A. Okay. 21 MR. McDONALD: Would you mark that the 22 next exhibit, please. 23 (Lawson Exhibit No. 24 24 was marked for 25 identification.)	271
270 1 overnight that we had kind of left open yesterday? 2 A. Some of it I have been able to track down, 3 yes. 4 Q. What were you able to figure out? 5 A. I think one of the questions that you had 6 asked yesterday was about procure net receiving a 7 license, was one of the topics for procure net at 8 Fisher Scientific. 9 I do know now that procure net did as part 10 of the acquisition receive a license to the -- to the 11 software. It's unclear whether procure net had given 12 a license prior to the acquisition to Fisher. 13 That does not seem to be part of the ePlus 14 agreement with procure net. 15 Q. Okay. 16 A. Okay. In regards to the other things that 17 you asked to look at, I think it was Hanes, Digitas, 18 Devon Energy. There was one other one in there. 19 It's just escaping my mind. 20 It will come to me. 21 Q. Gannett, maybe? 22 A. Gannett. Thank you. 23 You asked if they were -- how we were 24 integrating with -- with those systems and if they -- 25 I think on one in particular, which was Hanes, were	270 1 BY MR. McDONALD: 2 Q. Mr. Farber, do you recognize exhibit 24? 3 A. Just give me one second. 4 Yes. 5 Q. What is it? 6 A. This is a presentation that as I recall we 7 put together for Forrester Research. We were meeting 8 with them, talking about our solutions and 9 potentially soliciting their support in certain areas 10 of our business relative to messaging and marketing 11 and advice. 12 Q. Who is Forrester Research? 13 A. Forrester Research is an industry research 14 firm that covers -- well, one of the areas that they 15 cover happens to be in the procurement supply chain 16 contents space. 17 Q. When you say you're seeking support from 18 them, what sort of support were you hoping to get? 19 A. Well, I was hoping to get free support, 20 but unfortunately, they charge you for their time and 21 services. So -- they're an analyst firm. They are 22 primarily engaged in reporting to their customers, 23 commercial customers and government customers, the 24 state of the industry. 25 They cover many topical areas, and	272

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

273	275
<p>1 customers, commercial and government customers, 2 utilize these firms for their briefing documents on 3 topical information in the supply chain. It could be 4 anything from the latest and greatest things in 5 accounts payable, tools, techniques, tips, where the 6 industry may be going.</p> <p>7 They do have often information about 8 certain companies and products that are of interest 9 to clients. But they have knowledge about where the 10 industry is going in terms of what their customers 11 are telling them in terms of their needs today and in 12 the future.</p> <p>13 They offer a service to vendors that if 14 you pay them enough money, they will work with you to 15 construct a -- whether a development road map, a 16 marketing road map, a messaging road map to provide 17 insight on the data that they have, not about 18 specific customers, but just the data and information 19 to formulate an appropriate corporate strategy.</p> <p>20 Q. Is that what they -- they charge money 21 for, then?</p> <p>22 A. Absolutely.</p> <p>23 Q. You were hoping to get some of that for 24 free?</p> <p>25 A. Always.</p>	<p>1 Q. Did you help put together this exhibit 24 2 briefing?</p> <p>3 A. I think I participated in it to the best 4 of my recollection.</p> <p>5 Q. You turn to the second page.</p> <p>6 A. Yes.</p> <p>7 Q. It says, an overview regarding the ePlus 8 solution suite.</p> <p>9 Correct?</p> <p>10 A. Oh, I'm sorry.</p> <p>11 Second page?</p> <p>12 Oh, yes.</p> <p>13 I'm sorry.</p> <p>14 That's correct.</p> <p>15 Q. And this is regarding the products that 16 are sold in your division.</p> <p>17 Correct?</p> <p>18 A. Yes.</p> <p>19 Q. Now, IT automation, I'm trying to remember 20 if that was one of the ones listed.</p> <p>21 Was that one of the categories in your 22 division?</p> <p>23 A. It's part of our procurement portfolio.</p> <p>24 Q. Okay. Looks like it's separated out here, 25 though.</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

277	279
<p>1 into the fold of procurement whereby it's not as 2 prevalent today because of the constant change and 3 influx of information on a daily basis. 4 So it's very high-level, but that 5 describes the process. 6 Q. So is there more to it than simply selling 7 your e-procurement products to IT organizations? 8 A. Well, there's more to it in the sense that 9 ultimately we would like to get a larger percentage 10 of the IT spend from the customer, so we have other 11 services that we offer as part of our IT automation 12 pitch if you will to the customer. 13 Q. You offer more services when they're going 14 to use your e-procurement product to buy products 15 from ePlus? 16 A. From -- from ePlus -- we would offer 17 additional products and services, yes. 18 Q. You turn to the third page of exhibit 24, 19 please. 20 A. Yes. 21 Q. This shows the revenues for the 4 fiscal 22 years 2005 through 2008. 23 Correct? 24 A. Okay. 25 Q. Correct?</p>	<p>1 potentially losing some customers, gaining in 2 other -- you know, wash -- creating a wash effect. 3 Q. Will you turn to the page a couple more 4 pages in marked last digits 8144. 5 A. Yes. 6 Q. This is similar to another drawing we saw 7 in one of the other presentation documents we've 8 talked about today. 9 Correct? 10 A. Yes, it's similar. 11 Q. There's a couple of terms here I want to 12 ask about under the left -- upper left square, 13 product information management. There's a bullet 14 there for catalog management. 15 Correct? 16 A. That's correct. 17 Q. And then the second-to-the-last bullet 18 under e-procurement. 19 That's inventory management. 20 Correct? 21 A. That's correct. 22 Q. What's the difference between inventory 23 management and catalog management? 24 A. Inventory management as part of the 25 offering -- optional offering within our procurement</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

1 A. It can be, and at times it doesn't have to 2 be. 3 Q. What criteria are used to determine 4 whether the catalog is or is not on the same computer 5 as procure plus? 6 A. I think it's more a matter of the way a 7 data center is assembled and how much space is on a 8 specific device, you know, to -- and how much 9 networking bandwidth one may have to determine where 10 you may want to put it physically. 11 Q. How does the procure plus system 12 communicate with the catalog database? 13 A. It's an integral part, you know, between 14 the 2 systems -- between the environments. It does 15 database calls, you know, to the -- to the database. 16 Q. Is the catalog database typically resident 17 right on the same computer that has procure plus? 18 A. No. 19 You asked me that. 20 Q. Yes. 21 Okay. You said sometimes it is. 22 Right? 23 A. It can be. It doesn't have to be. 24 Q. What -- what is the most frequent 25 embodiment?	281 1 a customer, or does the customer make that decision? 2 A. The ePlus is managing it for the customer, 3 so the customer really doesn't care how we have it 4 set up. 5 Now, in an enterprise situation where 6 somebody has it installed in back of their firewall, 7 that's up to their -- to them in terms of the size of 8 the server that they have available and how they may 9 want to split it up. 10 Q. So when it -- the alternative to 11 enterprise is the hosted situation. 12 Right? 13 A. Right, either license in your data center 14 or have us manage it. 15 Q. So in the hosted situation, does ePlus 16 host both the procure plus software and the catalog 17 database for the customer? 18 A. I think in -- in some instances, we do. 19 In a couple of instances, we have clients running the 20 procurement application at their site and the catalog 21 at our site. 22 Q. About what percentage of the procure plus 23 customers use the hosted embodiment? 24 A. Today -- well, almost every new customer 25 today is using hosted, but that's just the way the
282	284

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

285	287
<p>1 protocol that exists for transmitting information 2 from the catalog database to the ePlus system for a 3 given customer?</p> <p>4 A. There is, but I don't know the technical 5 details of what, you know, the standard database 6 calls are and things of that nature.</p> <p>7 Q. When you say, standard database calls, can 8 you tell me generally what are thinking of?</p> <p>9 A. When you're talking about the application 10 talking to the catalog, is that what you're referring 11 to?</p> <p>12 Q. Yes.</p> <p>13 A. There's methods of communications that are 14 used. I don't know what they're called and how we 15 refer to them and what they're actually physically 16 using to do that.</p> <p>17 That's all.</p> <p>18 Q. Your understanding, though, that whatever 19 methods are used there are the standard methods?</p> <p>20 A. I call them standard methods. They may be 21 just, you know, standard industry methods.</p> <p>22 I don't know. I don't have the 23 information to get to that level of granularity for 24 you.</p> <p>25 Q. Who would know more about that than you?</p>	<p>1 You're saying it's the same sort of thing 2 in the enterprise?</p> <p>3 A. Yes, yes.</p> <p>4 Q. Okay. What is the platform that ePlus 5 uses to host the databases, the catalog databases?</p> <p>6 A. I think it's a combination of Oracle 7 databases. I think we may have some SQL as well.</p> <p>8 Q. Has the way the catalog databases 9 communicate with procure plus -- has that changed all 10 in the last 10 years?</p> <p>11 A. Not that I'm aware of. I have no 12 detailed, you know, knowledge of that.</p> <p>13 Q. Let's put this one aside.</p> <p>14 A. Okay. Okay.</p> <p>15 MR. McDONALD: Mark that as the next 16 exhibit, please.</p> <p>17 (Lawson Exhibit No. 25 18 was marked for 19 identification.)</p> <p>20 BY MR. McDONALD:</p> <p>21 Q. Mr. Farber, do you recognize what was 22 marked as exhibit 25?</p> <p>23 A. It appears to be a -- another variation of 24 a description of our solutions.</p> <p>25 Q. How -- have you seen exhibit 5 before?</p>
286	288
<p>1 A. I would suspect our development manager.</p> <p>2 Q. Who's that?</p> <p>3 A. A gentleman by the name of Devander 4 Achalla (phonetic).</p> <p>5 Q. Get the spelling for that later, I 6 suppose.</p> <p>7 A. Ah, it's easy. (Laughing.)</p> <p>8 Q. When the customer hosts their own catalog 9 database in procure plus software, does ePlus provide 10 them some sort of a means for their catalog database 11 to communicate with the ePlus software -- excuse 12 me -- the procure plus software?</p> <p>13 A. Yeah.</p> <p>14 When we deliver software for a customer 15 whether it's hosted or whether it's enterprise, the 16 catalog and the procurement system communicate with 17 one another.</p> <p>18 So there are calls, application calls to 19 do queries and searches from the application to 20 the -- to the catalog.</p> <p>21 Q. What protocols or communication protocols 22 are used for those calls?</p> <p>23 A. That's what we just covered.</p> <p>24 Q. I thought we were talking about in the 25 hosted situation.</p>	<p>1 MR. ROBERTSON: 25, I think you mean.</p> <p>2 BY MR. McDONALD:</p> <p>3 Q. Excuse me.</p> <p>4 25.</p> <p>5 A. Components of it, not that -- not in 6 detail.</p> <p>7 People use different components, different 8 presentations to put them together for different 9 purposes, so I may not have seen this one in its 10 entirety.</p> <p>11 Q. Would the presentation, exhibit 25, have 12 been used with customers, analysts internally, or 13 what?</p> <p>14 A. Let me just -- if I can just breeze 15 through this.</p> <p>16 Q. M-hm.</p> <p>17 (Pause.)</p> <p>18 A. I mean, just at a high level, not going 19 through every single page, it looks like it may be 20 used for an internal training. It could also 21 potentially pieces of it be used for prospects.</p> <p>22 BY MR. McDONALD:</p> <p>23 Q. Can you turn to the page last 5 digits 24 13443, please.</p> <p>25 A. Yes.</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 Q. Can you tell me generally what is being 2 depicted here in this drawing?</p> <p>3 A. This is a discussion that depicts quality 4 of content, and I'm sure later, it talks about why 5 it's important to have good content. But it is a 6 representation that there's times that content 7 resides in its originating form in -- on multiple 8 sources.</p> <p>9 They may be sitting in old legacy 10 back-office systems. They may be sitting on paper 11 catalogs, computer disks. They may be electronic 12 from the suppliers, which is even -- you know, is 13 good. And we have a process and a professional 14 content group that has expertise in taking that 15 information and making that information electronic to 16 build a content catalog.</p> <p>17 And it talks about the processes by which 18 they go through, and that's kind of the group we were 19 referring back to earlier when we were talking about, 20 you know, them being involved for 10 years, and I was 21 trying to describe what that content box was. That's 22 what they do.</p> <p>23 Q. So aggregation is basically collecting the 24 catalogs from these various sources listed in the 25 green boxes here?</p>	<p>289</p> <p>1 Correct? 2 A. Yes. 3 Q. What does that refer to? 4 A. Well, that means when -- when our -- when 5 our folks help our clients get better data, rich 6 content refers to a catalog that has been validated, 7 cleaned, normalized, follows a certain taxonomy or 8 schema, and can be used in an electronic procurement 9 system.</p> <p>10 Q. Can you go ahead 5 pages to the page last 11 5 digits 13448. 12 A. Yes, yes. 13 Q. Is this an example of an entry in the 14 ePlus catalog that's gone through that process that 15 you just described? 16 A. This is the extreme. 17 There's -- I'd love to say that all the 18 work that we do for our customers are to this level, 19 but this is the -- this is nirvana when it comes to 20 catalog content. 21 Q. Is this atypical, what's on page 134- -- 22 A. For some customers -- I'm sorry. 23 Q. I'm sorry. 24 Just making sure we're talking about the 25 same thing.</p>	291
<p>1 A. It's pulling all the data together. 2 Q. Then the next few boxes, validation, 3 classification, standardization, normalization, and 4 enrichment, is that part of the data cleansing 5 process? 6 A. It's part of the services that we provide, 7 yes. 8 Q. You call that cleansing the data. 9 Right? 10 A. Cleaning the data, cleansing the data, 11 enriching the data. It's all synonymous. 12 Q. Is the standardization step -- is that the 13 step that relates to the other patent technology that 14 you referred to earlier? 15 A. It's one of the elements you can refer to 16 as standardization. 17 Q. Are there other parts of the -- of that 18 patent that are shown in this flow chart here other 19 than standardization, generally? 20 A. It's really not meant to depict the steps 21 of the patent. But, you know, I'd have to go back 22 and look at the patent and see which pieces may or 23 may not fit in. 24 Q. Then there's a box here shown as rich 25 content.</p>	<p>290</p> <p>1 Is what's on page 13448 atypical of what's 2 in the ePlus catalogs developed by the process you 3 described? 4 A. Well, yeah. 5 I mean, just to verify, it's not our 6 catalogs. It's our clients' catalogs. 7 Right? 8 So sometimes we're doing the work for our 9 customers, sometimes the customers can do the work 10 for themselves with the tools that we provide. 11 Sometimes we don't have enough information 12 to get to this level. Other times, we do. So it 13 varies. 14 Q. When you say, this is extreme, I'm trying 15 to get a sense: Is this close to what's typically in 16 the e-catalogs generated using your systems, or not? 17 A. Depending upon the commodity. 18 If we are talking about IT, which is 19 something that we have a good handle on because of 20 our value-added reseller business and working closely 21 with the suppliers, we're able to get this level of 22 granularity. 23 There's other suppliers that do not have 24 this level of granularity. Sometimes customers pay 25 us to do that for them. And other times, they're</p>	292

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 okay with shorter descriptions.</p> <p>2 Q. So in the cases where the customer doesn't</p> <p>3 have the level of granularity as you put it shown on</p> <p>4 this page, what would be missing that's -- that's on</p> <p>5 this page in those instances?</p> <p>6 A. Typically, it would just be shorter levels</p> <p>7 of information.</p> <p>8 Q. So the descriptions would be shorter?</p> <p>9 A. Description would -- could be shorter.</p> <p>10 There could be more or less attributes associated</p> <p>11 with the item. There may or may not be a picture.</p> <p>12 It varies.</p> <p>13 Q. With respect to attributes, that -- those</p> <p>14 are the things identified by the green boxes next to</p> <p>15 the number 4.</p> <p>16 Correct?</p> <p>17 A. That's a visual representation, correct.</p> <p>18 Q. When a user of the ePlus system searches</p> <p>19 let's say for a laser printer and if this item was</p> <p>20 one of the items that was responsive to the search,</p> <p>21 would the user see a page that looks like 13448?</p> <p>22 A. After they've selected the particular</p> <p>23 item?</p> <p>24 Q. Yes.</p> <p>25 A. You know, said, this the one I want to</p>	<p>293</p> <p>1 Did you say they would see a picture if</p> <p>2 it's available?</p> <p>3 A. If it's available.</p> <p>4 Q. Now, if the customer is trying to do a</p> <p>5 side-by-side comparison of 2 products from 2</p> <p>6 different suppliers, how much of what's shown here on</p> <p>7 13448 would they see for each product they're</p> <p>8 comparing?</p> <p>9 A. My recollection is that they would see --</p> <p>10 they may see the picture if it's available. They may</p> <p>11 see the item number. They may see the attributes.</p> <p>12 They're not going to necessarily see the short and</p> <p>13 long description, I don't believe.</p> <p>14 Q. So if available, they'll see 2 pictures,</p> <p>15 one for one product, the other for the other product</p> <p>16 they're comparing to?</p> <p>17 A. They may be comparing 10 products.</p> <p>18 Q. They could see 10 pictures in that case?</p> <p>19 A. If it's available. Could be small,</p> <p>20 doesn't -- you know, it's kind of irrelevant to the</p> <p>21 search. It just pulls up the information that's</p> <p>22 available.</p> <p>23 If there's no picture, it's not going to</p> <p>24 show up, so it could work either way.</p> <p>25 Q. But there's less information per item if</p>	<p>295</p>
<p>1 look at closer?</p> <p>2 Not exactly. I think we may have changed</p> <p>3 our -- our graphical interface. I don't know that</p> <p>4 this is the exact representation of it.</p> <p>5 Q. Is it generally similar?</p> <p>6 A. I'd have to go back and look. It's been a</p> <p>7 while.</p> <p>8 Q. Well, you've seen the page the -- what the</p> <p>9 catalog looks like up on the computer screen from</p> <p>10 time to time.</p> <p>11 Right?</p> <p>12 A. Yeah.</p> <p>13 There's general information. The layouts</p> <p>14 may be different, but there's attributes -- I think</p> <p>15 the attributes now go across the screen versus going</p> <p>16 down vertically, subtle differences that way.</p> <p>17 Q. Okay. So there might be some subtle</p> <p>18 differences from 13448, but other than that, is this</p> <p>19 generally what a user is going to see if they select</p> <p>20 a particular item?</p> <p>21 A. If they select an item, they will see a</p> <p>22 picture if it's available, a short and long</p> <p>23 description if it's available, and the attributes</p> <p>24 that are available.</p> <p>25 Q. Will they see -- I'm sorry.</p>	<p>294</p> <p>1 you've got multiple items on the screen.</p> <p>2 Right?</p> <p>3 A. There's just so much that you could</p> <p>4 physically look at on the screen, but you could also</p> <p>5 scroll down.</p> <p>6 I think the way we did the layout is to</p> <p>7 allow the user to scroll to potentially see more</p> <p>8 because there may be more information from one</p> <p>9 supplier than may have been provided from another</p> <p>10 supplier.</p> <p>11 Q. Could you skip ahead about 3 pages to the</p> <p>12 page ending in 13451.</p> <p>13 A. Yes.</p> <p>14 Q. This talks about the supplier portal.</p> <p>15 Correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Is that part of procure plus or something</p> <p>18 else?</p> <p>19 A. No.</p> <p>20 That's the portal that we discussed</p> <p>21 yesterday.</p> <p>22 Q. Okay. Which -- is that part of content</p> <p>23 plus or is that part of one --</p> <p>24 A. It's part of the content plus family --</p> <p>25 Q. Okay.</p>	<p>296</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

297	299
<p>1 A. -- called, supplier portal.</p> <p>2 Q. Oh, there it is. It's right there.</p> <p>3 And it refers to -- well, supplier portal</p> <p>4 provides an interface to content plus.</p> <p>5 That's what it says here on the first</p> <p>6 bullet.</p> <p>7 Right?</p> <p>8 A. That's right.</p> <p>9 Q. Okay. So a buyer of content plus has the</p> <p>10 option of getting a supplier portal?</p> <p>11 A. If -- yes. If they -- if they purchase</p> <p>12 it, yes.</p> <p>13 The supplier portal can also work with --</p> <p>14 with -- with other systems too. It doesn't have to</p> <p>15 use our catalog. A lot of times the supplier portal</p> <p>16 isn't necessarily used just for content as a -- as a</p> <p>17 catalog.</p> <p>18 Q. How else is supplier portal used?</p> <p>19 A. Sometimes it's used to -- if there's</p> <p>20 information that people want to put into their legacy</p> <p>21 databases and keep them synchronized, whether they're</p> <p>22 inventory databases or accounting systems and they</p> <p>23 want to use the system to normalize records that they</p> <p>24 have, they may use the system that way.</p> <p>25 Its most typical application though is for</p>	<p>1 Q. Yes.</p> <p>2 A. Yes.</p> <p>3 Q. This represents the procure plus process</p> <p>4 from requisitioning to sourcing.</p> <p>5 Correct?</p> <p>6 A. This is one very high-level view of the --</p> <p>7 of the process. There's I think several pages before</p> <p>8 it are more detailed, so this is one element of</p> <p>9 the -- of the process.</p> <p>10 Q. Well, the prior pages, the lower right box</p> <p>11 is accounts payable and spend analysis, right, the</p> <p>12 prior 3 pages?</p> <p>13 A. Well, I mean -- just give me a second.</p> <p>14 This 13480 is showing sourcing events --</p> <p>15 Q. Yeah.</p> <p>16 A. -- to do ad hoc sourcing, I think.</p> <p>17 The one prior is -- was for support spend</p> <p>18 analysis. The other has -- the one prior deals with</p> <p>19 matching invoices.</p> <p>20 So these are showing different functions</p> <p>21 and the flow of those different functions within the</p> <p>22 system.</p> <p>23 I guess the point is that this doesn't</p> <p>24 replicate the whole system functionality.</p> <p>25 Q. But this page 13480 does seem to at least</p>
298	300
<p>1 building collaboration with suppliers for catalogs.</p> <p>2 Q. Are you aware of any instances where the</p> <p>3 supplier portal was provided to customers that were</p> <p>4 using a Lawson system and not using the ePlus</p> <p>5 catalog?</p> <p>6 A. I don't have recollection of it.</p> <p>7 Q. That's a possibility, though?</p> <p>8 A. It could be.</p> <p>9 Q. It says here in the first bullet point,</p> <p>10 suppliers can self-author their catalogs online.</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. What does that mean?</p> <p>14 A. The supplier portal has a -- I refer to it</p> <p>15 as a dashboard. And the dashboard is a collaboration</p> <p>16 vehicle for the suppliers to take their product</p> <p>17 information and load it into the system through an</p> <p>18 interface.</p> <p>19 And that interface then can help end-users</p> <p>20 go through a workflow process to determine if they</p> <p>21 want that item to be migrated into a production</p> <p>22 environment.</p> <p>23 Q. Can you turn ahead about 30 pages actually</p> <p>24 to the last 5 digits 13480.</p> <p>25 A. 480?</p>	<p>1 relate to sourcing.</p> <p>2 Right?</p> <p>3 A. Sourcing as it relates to the quotation</p> <p>4 function for an RFQ.</p> <p>5 Q. So is it your understanding that this</p> <p>6 process only shows processing for sourcing involving</p> <p>7 an RFQ?</p> <p>8 A. Yeah.</p> <p>9 This is specifically highlighting that if</p> <p>10 you want to have a request for a quote in a separate</p> <p>11 bid to a specific vendor, this is showing the process</p> <p>12 of the system in that particular instance.</p> <p>13 Q. That's what a sourcing event would be?</p> <p>14 A. That's correct. That's correct.</p> <p>15 Q. Can you turn 10 more pages to the page</p> <p>16 ending in 13490.</p> <p>17 A. Okay. Yes.</p> <p>18 Q. In the upper left corner says, achieving</p> <p>19 spend analysis.</p> <p>20 Correct?</p> <p>21 A. That's correct.</p> <p>22 Q. So this page talks about the spend</p> <p>23 analysis category of your business.</p> <p>24 Right?</p> <p>25 A. I believe it does, yes.</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 Q. Now, on this page on the left, there's a 2 green box under the heading, data sources. 3 Correct? 4 A. That's correct. 5 Q. And 2 of the data sources are inventory 6 and catalogs. 7 Correct? 8 A. That's correct. 9 Q. What's the difference between the 10 inventory data source and the catalogs data source? 11 A. M-hm. Again, catalogs are catalogs that, 12 you know, I've been describing in terms of the 13 catalogs that are used in the procurement systems. 14 Inventory is some old -- older, I should 15 say, legacy inventory systems that customers run in 16 their back-office maintenance facilities and 17 manufacturing facilities that just manage inventory. 18 They have a list of their bin locations, 19 their bin max levels, rules for demand forecasting 20 and prediction and analysis, so they may have some 21 data residing in different forms in those systems as 22 well. 23 Q. Do those inventory data sources that are 24 referred to here -- would they include that 25 information on an item-by-item basis?</p>	<p>301</p> <p>1 whether you would think those are catalogs or not? 2 A. Depends what you use in terms of -- it's 3 data sources. It's information -- we don't refer to 4 the inventory systems as catalog systems. 5 We refer to supplier catalogs, but we 6 don't refer to inventory catalogs. But again, I 7 don't -- I don't know the semantics of one or the 8 other. 9 Q. Okay. We can put that one down. 10 A. Okay. 11 MR. McDONALD: We can take another break. 12 Gone through a stack. So it's a good time to break. 13 THE VIDEOGRAPHER: The time is 14 approximately 11:09 AM. We're going off the video 15 record. Off the record. 16 (Recess.) 17 (Lawson Exhibit No. 26 18 was marked for 19 identification.) 20 THE VIDEOGRAPHER: The time is 21 approximately 11:29 AM. We're back on the video 22 record. 23 BY MR. McDONALD: 24 Q. Mr. Farber, you've been handed exhibit 26. 25 This is a document ePlus produced to us that looks</p> <p>303</p>
<p>1 A. The inventory systems typically have some 2 level of item information so that they are associated 3 with I guess the levels of inventory that they have. 4 Q. What sort of item information do the 5 inventory data sources typically have that you're 6 referring to here? 7 A. I guess it varies. It could vary by 8 vendor or by home-grown system. 9 Q. Can you give me an idea, though, what 10 would typically be the item information available for 11 an inventory data source? 12 A. It could be a -- I would imagine a -- in 13 the older inventory systems, it was just -- there's 14 generally part numbers, bin location, quantity, 15 min-max levels, what are replenish levels. 16 Q. Would that data source include some part 17 description in the inventory -- 18 A. It may or may not. I don't know. I 19 suppose that would vary by the system too. 20 Q. Would you consider those item-by-item 21 inventory records to be catalogs? 22 A. I don't know. I don't know how they're 23 particularly assembled, and that would be out of my 24 expertise there. 25 Q. What would you need to know to determine</p>	<p>302</p> <p>1 like a series of emails. 2 A. Okay. 3 Q. Some of the names here are Barry Tager, 4 T-A-G-E-R. 5 Do you see his name on here? 6 A. Yes, I do. 7 Q. Who is Barry Tager? 8 A. Barry Tager was a former employee. 9 Q. What was his job? 10 A. I believe his role was customer support. 11 Q. Who is Mary Anderson? 12 A. Mary Anderson was a tech writer, I 13 believe, documentation. 14 Q. And who is Amy Crouse? 15 A. Amy Crouse -- Amy Crouse was -- I think 16 she was an administrator. 17 Q. Now, these emails here are from November 18 and December 2003. 19 Correct? 20 A. Yes. 21 Q. If you go to page 2 of this document, at 22 the bottom, take these things as you do for emails 23 from the bottom up -- 24 A. Yes. 25 Q. -- to get them in chronological order.</p> <p>304</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 That one is an email from Amy Crouse dated 2 November 14th, 2003?</p> <p>3 Correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. The subject of that is marking of all 6 documentation.</p> <p>7 Right?</p> <p>8 A. Yes, yes.</p> <p>9 Q. And then she says: Hello, everyone, 10 please see the attached list of documentation. I am 11 sorry to be putting more work onto you, but I need to 12 get the procure plus patent information into all of 13 the documents on this list.</p> <p>14 A. Okay.</p> <p>15 Q. The next sentence lists the 3 patents 16 involved in this suit.</p> <p>17 Right?</p> <p>18 A. Yes.</p> <p>19 MR. ROBERTSON: It's actually a typo in 20 one, but --</p> <p>21 MR. McDONALD: Which one is the typo?</p> <p>22 MR. ROBERTSON: It says, 515. It's 23 actually 516.</p> <p>24 BY MR. McDONALD:</p> <p>25 Q. Okay. Please make the documentation</p>	<p>305</p> <p>1 documents to be marked.</p> <p>2 BY MR. McDONALD:</p> <p>3 Q. In preparation for the deposition</p> <p>4 yesterday and today, did you do any investigation as</p> <p>5 to when ePlus started marking the patent number?</p> <p>6 A. I didn't do any new investigations. It's</p> <p>7 come up in prior litigation.</p> <p>8 Q. What is your understanding as to when</p> <p>9 ePlus first began continuously marking the patent</p> <p>10 numbers on the products it sold that were covered by</p> <p>11 the patents?</p> <p>12 MR. ROBERTSON: Object to the form of the</p> <p>13 question.</p> <p>14 But you can answer.</p> <p>15 A. Well, our products as far as I'm aware and</p> <p>16 recall were looking at marking I believe as of -- to</p> <p>17 the best of my recollection, it was October 2003.</p> <p>18 BY MR. McDONALD:</p> <p>19 Q. And how do you know that?</p> <p>20 A. How do I know that?</p> <p>21 Well, I think it was a result of</p> <p>22 investigation from prior, you know, litigation going</p> <p>23 back to determine when we started marking.</p> <p>24 Q. Are you aware of any documentation at</p> <p>25 ePlus that would indicate the marking had been done</p>
<p>306</p> <p>1 accordingly and let me know when it is completed. I 2 need to have this done by December 30, 2003. Thanks 3 for all of your help.</p> <p>4 That's the email.</p> <p>5 Right?</p> <p>6 A. That's what it says, yes, correct.</p> <p>7 Q. Okay. Now, this would indicate that as of 8 November 14th, 2003, the patent information had not 9 been put in all the documentation relating to procure 10 plus yet.</p> <p>11 Correct?</p> <p>12 MR. ROBERTSON: Objection, assumes --</p> <p>13 contains an assumption, improper assumption.</p> <p>14 Go ahead.</p> <p>15 A. Yeah.</p> <p>16 I actually wouldn't know that. I'd have 17 to check.</p> <p>18 I mean, at that period of time, there may 19 have been marked and we may have been coming out with 20 a new release, new documentation that before it hit 21 the street or was sent to customers, it needed to be 22 marked.</p> <p>23 I don't have a list of the documents that 24 are being referred to. So it's difficult for me to 25 ascertain in what context they're asking certain</p>	<p>308</p> <p>1 on a continuous basis by October of '03?</p> <p>2 A. Am I aware of documentation that --</p> <p>3 Q. Right.</p> <p>4 A. It's always an evolution. Everything that 5 we do continues. You know, if we produce a new 6 document, a new document has to be marked, so --</p> <p>7 Q. I'm not so much talking about that.</p> <p>8 A. Okay.</p> <p>9 Q. I'm saying, is there any sort of a record, 10 electronic record, piece of paper, something that 11 actually corroborates that marking began on a 12 continuous basis in October of 2003?</p> <p>13 A. There very well may be documents that were 14 produced that show that things were marked as of that 15 date.</p> <p>16 Q. Have you seen any such documents in the 17 past?</p> <p>18 A. I may have. I mean, I can't say exactly 19 which ones, but if they existed, I'm sure they were 20 produced.</p> <p>21 Q. As you sit here today, can you recall any 22 documents with particularity?</p> <p>23 A. I know at the point in time that we were 24 aware that we needed to mark products, we were 25 informed that the way you go about marking products,</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 I know that we did do confirmations around that 2 period of time. 3 Q. What was actually done to mark the ePlus 4 products? 5 A. What was done? 6 Q. Yes. 7 A. We were advised by counsel to mark the 8 products. We received the specific language that 9 needed to be used for marking of the products. 10 I believe correspondence was sent out to 11 the appropriate groups on how to utilize that 12 language and a confirmation from them when they were 13 marked. 14 Q. So when you say, confirmation, was there 15 some documentation of the various groups confirming 16 that they had begun marking? 17 A. I believe that there were emails that were 18 exchanged that created a confirmation. 19 Q. Do you know whether those emails were 20 produced in litigation, in this litigation? 21 A. I can only assume they were. 22 Q. Do you believe that exhibit 26 here -- is 23 that an example of one of the confirming emails that 24 was produced? 25 A. No, no.</p>	<p>309</p> <p>1 that. 2 Q. Was Amy Crouse in charge of or involved in 3 the efforts to begin marking the patent numbers? 4 A. No, no. 5 Q. What is your understanding of why on 6 November 14th, she sent the email on the bottom of 7 page 2 of this exhibit about patent marking? 8 A. Well, she's an office administrator, so 9 clearly somebody had asked her or reminded her or 10 informed her that whatever documentation they were 11 referring to had to be marked in accordance with the 12 instructions that we received prior to that. 13 So she's doing what I would expect an 14 office administrator to do, coordinate activities at 15 somebody's direction. 16 Q. At whose direction did marking take place? 17 A. Well, I would say counsel's direction. 18 Q. From Amy Crouse's standpoint, though, who 19 would have given her those instructions? 20 A. Well, there was instructions that came 21 from our internal counsel, our internal general 22 counsel. 23 Q. Who is that at the time? 24 A. Erica Stoecker. 25 And all the appropriate individuals were</p> <p>311</p>
<p>1 This is -- this to me looks entirely 2 different. This to me appears to be I guess Amy 3 saying, you know, make sure the attached list of 4 documentation has the patent numbers on it. 5 So again, it could be a new set of 6 documentation that was going out or something that 7 was just created. I really don't know. 8 The email doesn't have the attachment 9 associated with it, so I don't know the exact 10 reference point here. 11 Q. But the first page of exhibit 26, the top 12 and last email -- 13 A. M-hm. 14 Q. -- dated December 22nd, 2003, it does say, 15 Amy, I've updated all my documents. 16 A. Okay. 17 Q. Right? 18 So this does -- is this the sort of thing 19 you would expect to see for emails where groups 20 confirmed that they had begun marking? 21 A. If -- if somebody asked somebody to mark 22 specific documents, yeah, I think it's fair to say 23 that Mary in this case whatever it is that she had to 24 update in that particular time period that she was 25 requested to do, it looks like she's responded to</p>	<p>310</p> <p>1 notified in the company of our requirements to not 2 only initially mark but to -- you know, what -- what 3 needs to be done on an ongoing basis with what we 4 produce. 5 Q. Do you believe in-house counsel is who 6 instructed Amy Crouse to communicate with employees 7 about marking? 8 A. I would have no clue in this instance. 9 I'd have to say not in this particular instance, 10 because I don't see general counsel copied on the 11 email. 12 Q. Who is the most senior person copied on 13 the email? 14 A. This is going back to 2003. I would say 15 there's -- pretty comparable in positions here. 16 Bob was a product analyst. Cindy Webb 17 (phonetic) was a developer. Pamela Johnston was an 18 integration person. David Maloney was an 19 implementation consultant. Joel Anderson was in 20 support. 21 So there's a lot of people with different 22 functions but similar levels. 23 Q. Do you think any of the people who 24 received this email were the people that instructed 25 Amy Crouse to send the email?</p> <p>312</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 A. I would suspect so, yes.</p> <p>2 Q. Who do you think assisted in that?</p> <p>3 A. It could have been any number of them. It</p> <p>4 could have been Cindy, Patty Frenette, Joel, Barry</p> <p>5 Tager.</p> <p>6 Q. So in any event, is it your understanding</p> <p>7 that Amy Crouse was acting on the direction of some</p> <p>8 executive at ePlus to send this out?</p> <p>9 A. I think I'll repeat it, but I'll describe</p> <p>10 it a different way.</p> <p>11 Amy Crouse is an office administrator, so</p> <p>12 not to demean her position. She's taking direction</p> <p>13 from somebody.</p> <p>14 Q. Yeah, that's what I'm asking.</p> <p>15 A. Yes, yes.</p> <p>16 Q. Okay. And then in her email, the</p> <p>17 second-to-the-last line says, quote: I need to have</p> <p>18 this done by 12, slash, 30, slash, 03, quote.</p> <p>19 Do you see that?</p> <p>20 A. In which -- which piece?</p> <p>21 I'm sorry.</p> <p>22 Q. The bottom of page 2.</p> <p>23 A. Bottom of page 2, yes, I do.</p> <p>24 Q. Is it your understanding that there were</p> <p>25 instructions issued at ePlus to have the marking of</p>	<p>313</p> <p>1 begins on the bottom of page 1 and continues to the</p> <p>2 top of 2.</p> <p>3 He says, quote: I also know that there</p> <p>4 may be some docs on this list which are old and no</p> <p>5 longer needed. If that's the case, just get rid of</p> <p>6 them. Many are now on Live Link and don't waste any</p> <p>7 time updating them with patent info.</p> <p>8 Do you see that?</p> <p>9 A. Yeah, I do.</p> <p>10 Q. Okay. Well, that would indicate that Amy</p> <p>11 Crouse's email wasn't just related to new release of</p> <p>12 products.</p> <p>13 Right?</p> <p>14 A. No, not necessarily, because there's -- I</p> <p>15 think what he's referring to, there's a lot of</p> <p>16 documentation with our products. Some of it -- as we</p> <p>17 go through new releases, some of it is rewritten,</p> <p>18 some of it is the old documents may be discarded</p> <p>19 because they've been incorporated into other</p> <p>20 documents, so he clearly could have been referring to</p> <p>21 those as well.</p> <p>22 Q. Well, he's talking specifically about the</p> <p>23 list of documents on Amy Crouse's email.</p> <p>24 Right?</p> <p>25 A. That's -- that's correct, sure.</p>	<p>315</p>
<p>1 the patents-in-suit done by December 30, 2003?</p> <p>2 A. No, not that I recall. I don't know what</p> <p>3 the significance of that particular date was for her.</p> <p>4 Q. Do you have any reason to doubt that Amy</p> <p>5 Crouse was instructed by somebody to inform those</p> <p>6 people who had to mark the patent number that they</p> <p>7 needed to have the marking process done by December</p> <p>8 30, 2003?</p> <p>9 A. I couldn't say. I mean, there may have</p> <p>10 been -- like I said, if it was associated with a new</p> <p>11 product release and they were going to go and deliver</p> <p>12 the products to a certain customer, it may have been</p> <p>13 projected that everything had to be done December</p> <p>14 28th, and she was being diligent in saying, well, in</p> <p>15 order to do that, I needed information by an earlier</p> <p>16 date.</p> <p>17 So I would have no indication of knowing.</p> <p>18 Q. Well, let's look at the email that starts</p> <p>19 at the bottom of the first page of exhibit 26, the</p> <p>20 email from Barry Tager.</p> <p>21 A. From Barry Tager.</p> <p>22 Q. Now, again what was Barry Tager's</p> <p>23 responsibility at the time?</p> <p>24 A. Barry Tager was support, customer service.</p> <p>25 Q. Now, you see there's a paragraph that</p>	<p>314</p> <p>1 Q. All right. And he's saying, some of those</p> <p>2 documents may be old and no longer needed.</p> <p>3 Right?</p> <p>4 A. That what's he's saying.</p> <p>5 Q. So those old and no longer needed</p> <p>6 documents clearly would not be for a new release,</p> <p>7 would they?</p> <p>8 A. Let me go back and rephrase what I -- when</p> <p>9 we put together a new release, we always go back to</p> <p>10 the documents. I'm not saying this pertained to a</p> <p>11 new release because I really have no clue what</p> <p>12 documents they're referring to here without the list</p> <p>13 in front of me, but I'm giving a hypothetical.</p> <p>14 We come up with a new release, some old</p> <p>15 documents, some old chapters of other manuals may be</p> <p>16 incorporated into another manual. All right. Used</p> <p>17 to be a stand-alone manual. With the new release</p> <p>18 maybe it's incorporated as a subchapter in a larger</p> <p>19 manual now.</p> <p>20 So you're going to discard the old manual</p> <p>21 because it's no longer needed. There's been an</p> <p>22 incorporation of that manual into something else.</p> <p>23 So that could be an example. Again it's</p> <p>24 hypothetical. Without knowing the list, you know, I</p> <p>25 have no way of doing anything but speculating what</p>	<p>316</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 the answer might be.</p> <p>2 Q. You know whether the list attached to Amy</p> <p>3 Crouse's email still exists or not?</p> <p>4 A. It may. I don't know.</p> <p>5 MR. McDONALD: I guess, Mr. Robertson, I'm</p> <p>6 going to ask to see if we can track down that list</p> <p>7 and, you know, there's been a lot of documents.</p> <p>8 I really can't vouch for the fact that</p> <p>9 there aren't any other emails on marking, but I would</p> <p>10 like to ask for those. It seems like there may be</p> <p>11 some others based Mr. Farber's testimony.</p> <p>12 MR. ROBERTSON: I'll be happy to go back</p> <p>13 and look and see if we have the list in any other</p> <p>14 emails.</p> <p>15 Just while we're on that subject, try and</p> <p>16 track down the Bates range for the procure net</p> <p>17 agreement too. It is part of the acquisition</p> <p>18 documents, and so if I locate those, I'll send you</p> <p>19 the Bates range.</p> <p>20 I might have that before the close of</p> <p>21 business today, but someone is trying to do a quick</p> <p>22 search on it.</p> <p>23 MR. McDONALD: All right. Thank you.</p> <p>24 MR. ROBERTSON: But if you've identified</p> <p>25 the procure net acquisition documents, it should be</p>	<p>317</p> <p>1 Q. Have you seen this document before?</p> <p>2 A. I may have. I don't recall it.</p> <p>3 Q. Direct your attention to the page marked</p> <p>4 EP 115285, about the 13th page.</p> <p>5 A. Yes.</p> <p>6 Q. That's the page that's right marked also</p> <p>7 page 12 in the upper right corner.</p> <p>8 Correct?</p> <p>9 A. Yes, that's correct. I'm with you.</p> <p>10 Q. You see a heading on the middle of the</p> <p>11 page, Zeborg, Z-E-B-O-R-G, offers third-generation</p> <p>12 solution for complex indirect procurement?</p> <p>13 A. I do see that.</p> <p>14 Q. Who is Zeborg?</p> <p>15 A. You know what, I don't recall to be honest</p> <p>16 with you. I mean, there's a lot of companies that</p> <p>17 have come and gone. I don't recall who they are.</p> <p>18 Q. You see any -- anything -- obviously you</p> <p>19 might need some time to be able to answer this next</p> <p>20 question, I'll just tell you that right now.</p> <p>21 A. Okay.</p> <p>22 Q. But do you see anything in exhibit 27 that</p> <p>23 is talking specifically about the ePlus procure --</p> <p>24 e-procurement or catalog products?</p> <p>25 A. You want me to go through the entire</p>	<p>319</p>
<p>1 with that.</p> <p>2 MR. McDONALD: All right. I'm going to</p> <p>3 put this one aside.</p> <p>4 Mark this as the next exhibit, please.</p> <p>5 (Lawson Exhibit No. 27</p> <p>6 was marked for</p> <p>7 identification.)</p> <p>8 BY MR. McDONALD:</p> <p>9 Q. Mr. Farber, you've been handed exhibit</p> <p>10 Lawson 27.</p> <p>11 Do you recognize this document?</p> <p>12 A. I recognize it as a -- as an Aberdeen</p> <p>13 white paper.</p> <p>14 Q. The title on the first page is, complex</p> <p>15 indirect procurement, the final frontier for savings.</p> <p>16 Correct?</p> <p>17 A. That's what it says.</p> <p>18 Q. It's dated November 2001?</p> <p>19 A. Yes.</p> <p>20 Q. Who is Aberdeen Group Inc.?</p> <p>21 A. It's a very similar group to what we</p> <p>22 discussed earlier as it relates to analyst firms. We</p> <p>23 talked about Forrester Research. Aberdeen I guess</p> <p>24 could be considered a competitor of Forrester</p> <p>25 providing the same services.</p>	<p>318</p> <p>1 document or --</p> <p>2 Q. Yes, at whatever level you have to do.</p> <p>3 (Pause.)</p> <p>4 MR. ROBERTSON: By the way, Dan, I just</p> <p>5 want to put on the record that I want to have the</p> <p>6 transcript marked confidential pursuant to the</p> <p>7 protective order, both yesterday's and today's.</p> <p>8 A. So having gone through it, I have a better</p> <p>9 familiarity with the document and understand its</p> <p>10 contents.</p> <p>11 BY MR. McDONALD:</p> <p>12 Q. Okay. Good.</p> <p>13 Do you recall the question?</p> <p>14 A. I do.</p> <p>15 I did not see a reference unless I missed</p> <p>16 a word, but I didn't see a reference.</p> <p>17 Q. Now, as of November of 2001, did ePlus</p> <p>18 have a procurement product?</p> <p>19 A. Sure, yes.</p> <p>20 Q. Was it called procure plus at that point?</p> <p>21 A. It may have been called 1-source, it may</p> <p>22 have been called procure plus, but one of the 2.</p> <p>23 Q. Whatever it was called now that you've had</p> <p>24 a chance to look at the document exhibit 27, did you</p> <p>25 see any reference to it?</p>	<p>320</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

321	323
<p>1 A. Not in this particular document, no.</p> <p>2 Q. The particular product this document</p> <p>3 refers to appears to be something by this company</p> <p>4 called Zeborg.</p> <p>5 Right?</p> <p>6 A. Not surprising.</p> <p>7 Q. Not surprising that they don't exist</p> <p>8 anymore or --</p> <p>9 A. No, not surprising that they're the ones</p> <p>10 that were highlighted.</p> <p>11 Q. And why is that not surprising?</p> <p>12 A. This is a typical Aberdeen white paper</p> <p>13 that incidentally we've done similar things where you</p> <p>14 pay Aberdeen a certain amount of money to discuss a</p> <p>15 certain segment of the industry or whatever it is,</p> <p>16 that vertical that you're talking about, and you're</p> <p>17 basically paying them to cover that space but then to</p> <p>18 list you and use you by example in the subset, you</p> <p>19 know, conclusions of that space and show how and what</p> <p>20 your position, so you pay handsomely for that but</p> <p>21 that's what Aberdeen does or had done for companies.</p> <p>22 Q. So you're pretty sure that's what happened</p> <p>23 here given the prominence of Zeborg?</p> <p>24 A. It appears to be -- it appears to be that,</p> <p>25 because when you look at an analyst's report that's</p>	<p>1 why adopters of e-procurement reported to Aberdeen</p> <p>2 that they were only processing 18 percent of their</p> <p>3 indirect expenditures through e-procurement systems</p> <p>4 on average.</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Do you have an understanding in the</p> <p>8 context of this paper what the term indirect</p> <p>9 expenditures means?</p> <p>10 A. Well, if you look at the next sentence, it</p> <p>11 says: Such factors lead Aberdeen to conclude that</p> <p>12 services procurement is one of the largest and yet</p> <p>13 untapped areas for cost savings.</p> <p>14 So they're referring -- that 18 percent in</p> <p>15 my interpretation based on the next sentence</p> <p>16 correlates to services procurement.</p> <p>17 Q. So it would be services as opposed to</p> <p>18 parts?</p> <p>19 A. Yes.</p> <p>20 Q. Has ePlus ever used exhibit 27 for</p> <p>21 marketing purposes to show customers why their</p> <p>22 technology is a valuable technology?</p> <p>23 A. I would hope not since we're not listed in</p> <p>24 there.</p> <p>25 MR. McDONALD: Mark that as the next</p>
322	324
<p>1 not a white paper and it's just an analyst report,</p> <p>2 it's a balanced report.</p> <p>3 This is an advertorial white paper for</p> <p>4 Zeborg that I'm sure they -- they paid handsomely</p> <p>5 for.</p> <p>6 Q. Did you see any reference in exhibit 27 as</p> <p>7 you went through it to any specific e-procurement</p> <p>8 technology that related to being able to search</p> <p>9 multiple catalogs?</p> <p>10 A. I have to go back and zero in. I was not</p> <p>11 going through and absorbing each paragraph. I was,</p> <p>12 you know, just looking as per your request to go</p> <p>13 through and see if we were referenced anywhere. So</p> <p>14 it's skim reading.</p> <p>15 (Pause.)</p> <p>16 BY MR. McDONALD:</p> <p>17 Q. You know, I will withdraw that question,</p> <p>18 because I think it's too hard to answer on the fly.</p> <p>19 A. Okay.</p> <p>20 Q. All right?</p> <p>21 A. Okay.</p> <p>22 Q. Can we go though to page 115281.</p> <p>23 A. Okay.</p> <p>24 Q. The first paragraph that begins on this</p> <p>25 page says, quote: These findings partially explain</p>	<p>1 exhibit, please.</p> <p>2 (Lawson Exhibit No. 28</p> <p>3 was marked for</p> <p>4 identification.)</p> <p>5 BY MR. McDONALD:</p> <p>6 Q. Mr. Farber, do you recognize exhibit 28?</p> <p>7 A. Yeah.</p> <p>8 It appears to be a press release issued by</p> <p>9 ePlus.</p> <p>10 Q. This is from July of 2003.</p> <p>11 Correct?</p> <p>12 A. Yes.</p> <p>13 Q. It indicates that ePlus was named to</p> <p>14 iSource business magazine's top 100.</p> <p>15 Correct?</p> <p>16 A. That's correct.</p> <p>17 Q. What is iSource business magazine?</p> <p>18 A. It's a trade publication.</p> <p>19 Q. Is it your understanding that this top 100</p> <p>20 relates to companies rather than individual products?</p> <p>21 A. Well, I don't know how to answer that</p> <p>22 actually, because there's companies that can have</p> <p>23 multiple products that may fit on their 100 list.</p> <p>24 Q. Well, in the first sentence there, it says</p> <p>25 that ePlus was named to the, quote: iSource 100 list</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 of leading supply and demand chain, dash, enabling 2 organizations.</p> <p>3 A. That's right.</p> <p>4 Q. Right?</p> <p>5 A. That's right.</p> <p>6 Q. So is it your understanding that the list 7 of a hundred is a list of a hundred organizations?</p> <p>8 A. That's our terminology. I don't know how 9 iSource represented it. But it's saying that within 10 the supply and demand chain offerings, we were one of 11 the ones in the -- in the 100 named.</p> <p>12 Q. One of -- basically it's probably 100 13 companies.</p> <p>14 Right?</p> <p>15 A. Products --</p> <p>16 Q. Well --</p> <p>17 A. -- offered by ePlus as an example.</p> <p>18 Q. Well, you say, products, but a product is 19 different from an organization.</p> <p>20 Right?</p> <p>21 A. Yeah, but let me -- I'd have to see the 22 representation of the top 100, how iSource 23 categorized it.</p> <p>24 Q. That's not an exhibit, is it?</p> <p>25 A. I don't know. I didn't look. No.</p>	<p>325</p> <p>1 kind of a mantra if you will that we utilize to 2 describe our offerings.</p> <p>3 Q. Which offerings of ePlus came under the 4 heading, ECM platform?</p> <p>5 A. It -- primarily the ones we've been 6 talking about procurement content, catalog 7 management, asset management.</p> <p>8 At the time we did not I don't believe 9 have spend analytics. So it's been all the other 10 ones that we've been discussing.</p> <p>11 Q. The next sentence, quote: The company 12 offers a suite of electronic procurement product and 13 catalog content management, asset management, 14 equipment financing and leasing, IT supply, and 15 electronic payment solutions that can stand alone or 16 work in tandem to eliminate extraneous supply chain 17 costs and support customers' strategic sourcing and 18 spend management initiatives, quote.</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. So is that suite that's described in that 22 sentence -- is that what ePlus marketed as the 23 enterprise cost management platform?</p> <p>24 A. No, our IT supply and financing business 25 wasn't part of the software enterprise cost</p> <p>327</p>
<p>1 But to be fair and to describe what I'm 2 referring to is that it talks -- it is a demand chain 3 publication. You know, there's within the supply 4 chain, right, or demand chain enabling supply chain, 5 there's multiple categories, one of which may be 6 procurement and content management. Another one 7 could be demand and forecasting systems. Another one 8 could be analytics and business intelligence.</p> <p>9 So that's -- and there may be a company 10 that offers more than one category, so they may have 11 been listed multiple times, is all I was trying to 12 delineate before for you.</p> <p>13 Q. Okay. But do you know one way or the 14 other whether the list was subdivided that?</p> <p>15 A. I think the list covered more than just 16 the space of procurement and content as I recall.</p> <p>17 Q. The third paragraph there says: ePlus's 18 inclusion in the list reflects the effectiveness and 19 maturity of its enterprise cost management platform.</p> <p>20 Do you see that sentence?</p> <p>21 A. I do.</p> <p>22 Q. What is the enterprise cost management 23 platform?</p> <p>24 A. That was our marketing term, ECM as we 25 refer to it. And enterprise cost management was a --</p>	<p>326</p> <p>1 management platform.</p> <p>2 So I think we're saying 2 different 3 things. You know, our inclusion in the list, you 4 know, reflects the effectiveness and maturity of its 5 platform, enterprise cost management platform. And 6 in the second sentence, I think it's our intent to 7 put a plug in to make anybody that's aware of reading 8 this press release of what other things ePlus does as 9 a company.</p> <p>10 Q. But you do list all of those things 11 including the financing and leasing and IT supply as 12 something that can help to eliminate extraneous 13 supply chain costs.</p> <p>14 Right?</p> <p>15 A. Sure.</p> <p>16 Q. So would you agree that at least reading 17 this paragraph, somebody might read this paragraph 18 and understand that finance and leasing and IT supply 19 were part of the enterprise cost management platform?</p> <p>20 A. Maybe they could, maybe they couldn't. I 21 don't know. I'm not sure.</p> <p>22 Q. And then what's electronic payment 23 solutions?</p> <p>24 A. That applies more to our IT business side 25 of our reselling, and, you know, electronically</p> <p>328</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 dealing with payments between us and our invoices and 2 payment processing for our customers. 3 Q. For the customers that are 4 buying equipment? 5 A. -- buying -- yeah, from ePlus, that's 6 correct. 7 Q. Okay. Would you agree that this listing 8 of ePlus as part of this iSource 100 list of leading 9 supply and demand chain enabling organizations isn't 10 specific to the procure plus or content plus 11 products? 12 A. The customers that -- it says that there 13 was a list of companies that had to demonstrate 14 return on investment. With iSource, it would have 15 been the procurement and content products that we 16 submitted. 17 Q. When you say, we submitted, what do you 18 mean? 19 A. iSource, what they typically do is, they 20 go to vendors and say, we're going to do a new 21 survey, do you want to participate. If you want to 22 participate and have a ranking, we need X number of 23 references, and here are the product categories that 24 you can participate in. 25 And we would have at that time used our</p>	<p>329</p> <p>1 Q. It also goes on to say: And for the value 2 we provide to enterprises that use our products and 3 services. 4 Right? 5 That's the whole sentence. 6 Right? 7 A. That's correct. That's correct. 8 Q. So that doesn't single out e-procurement, 9 does it? 10 A. I suppose it doesn't, but I am -- could be 11 a poorly written press release, but the fact of the 12 matter is, I can assure you that it was for 13 procurement and content of the names that we submit. 14 Q. That was -- okay. And that sentence you 15 read doesn't say anything about the catalog 16 management. 17 Right? 18 A. No. 19 It's a press release. 20 Q. At the time of the press release, were you 21 using the procure plus trademark? 22 A. This is going back to 2003. I don't 23 recall if it was procure plus or 1-source that we 24 were using at that time. 25 Q. All right. As of July 2003, were you</p>	331
<p>330</p> <p>1 product and content solutions and submitted I'm sure 2 customers to be part of that list. It would not have 3 been our IT supply or payment solutions or anything 4 or financing and leasing. 5 Q. Would you have supplied customers that 6 were customers both of the procurement product and 7 the IT supply or financing and leasing? 8 A. No. 9 Q. Why not? 10 A. Because, it was a supply chain survey, and 11 for us, just by what I see here in terms of the name 12 of enterprise cost management and using that term, we 13 were trying to build more and more momentum and 14 marketware for our procurement and content solution. 15 Q. Does this press release elevate the 16 procurement and catalog services above any of the 17 other services ePlus provides, or products? 18 A. Well, it says: We are honored to be 19 recognized for our contributions -- 20 Q. Slow down. 21 A. This is -- I'm sorry -- at the bottom of 22 page 1 -- we are honored to be recognized for our 23 contributions to cost-effective sourcing and 24 procurement. 25 So --</p>	<p>332</p> <p>1 using the content plus trademark? 2 A. I think we were using the content plus 3 trademark. I'd have to check. 4 Q. Neither of those trademarks is used in 5 this press release in any event. 6 Right? 7 A. It says: Enterprise cost management and 8 ECM are trademarks of ePlus. 9 So ECM is not describing the procurement 10 of the content product specifically. 11 Q. Yeah. 12 And those 2 brand names, procure plus and 13 content plus, they're not used in this thing, this 14 press release. 15 Right? 16 A. No. 17 It's a generic press release. 18 MR. McDONALD: Mark as the next exhibit, 19 please. 20 (Lawson Exhibit No. 29 21 was marked for 22 identification.) 23 BY MR. McDONALD: 24 Q. Mr. Farber, do you recognize exhibit 29? 25 A. Well, looks like another press release.</p>	332

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 Q. This is from January of 2004.</p> <p>2 Correct?</p> <p>3 A. Okay. Yes.</p> <p>4 Q. This is from -- this press release is by</p> <p>5 ePlus.</p> <p>6 Correct?</p> <p>7 A. Yes.</p> <p>8 Q. This relates to ePlus being ranked by</p> <p>9 Aberdeen as number 1 in the first quarter of '03 on</p> <p>10 its supply chain 50 report.</p> <p>11 A. That's correct.</p> <p>12 Q. And also number 2 on the second quarter</p> <p>13 '03 supply chain 50 report.</p> <p>14 Correct?</p> <p>15 A. That is correct.</p> <p>16 Q. Aberdeen is the company that wrote that</p> <p>17 paper about Zeborg that we were talking about before.</p> <p>18 Right?</p> <p>19 A. That is correct, yes.</p> <p>20 Q. This particular rating has to do with</p> <p>21 recognizing companies as a whole rather than</p> <p>22 individual products.</p> <p>23 Correct?</p> <p>24 A. No.</p> <p>25 This -- this top 50 ranking, and I know</p>	<p>333</p> <p>1 other companies' performance as a whole.</p> <p>2 Right?</p> <p>3 A. It's one of the factors, sure.</p> <p>4 Q. It's not just one the factors.</p> <p>5 Isn't this listing all of the factors?</p> <p>6 A. It's also -- has to do with the</p> <p>7 positioning of its -- of the products as an analysis</p> <p>8 that was done by the products as well.</p> <p>9 Q. Where does it say that?</p> <p>10 A. Well, if you go to -- it's not an</p> <p>11 attachment here, but I would recommend to understand</p> <p>12 what the report is about, there's a link there</p> <p>13 following, a summary of the supply chain 50 can be</p> <p>14 viewed.</p> <p>15 And I think that's the place to -- to look</p> <p>16 at the link. And, you know, as far as our</p> <p>17 participation, the first sentence does say that it</p> <p>18 positioned the company ahead of 48 other companies,</p> <p>19 including Ariba, Commerce One, I2, and MRO Software.</p> <p>20 Those companies we highlight because they</p> <p>21 specifically were there competing with us in the</p> <p>22 procurement and content space. And that's why we</p> <p>23 called them out in that particular report.</p> <p>24 Q. Would you agree that this press release</p> <p>25 indicates that the only criteria for being on the</p>	<p>335</p>
<p>1 this from -- from the quote here and who participated</p> <p>2 in it to Minahan -- his space was specifically supply</p> <p>3 chain in the area of procurement and content</p> <p>4 management, his -- his supply chain top 50 reports.</p> <p>5 Q. Can you look at the second paragraph and</p> <p>6 the second sentence, and you see where it says,</p> <p>7 quote: The supply chain 50 rewards companies based</p> <p>8 on quarterly financial information weighing a number</p> <p>9 of factors, including --</p> <p>10 A. I'm sorry.</p> <p>11 I don't mean to interrupt you.</p> <p>12 Where are we?</p> <p>13 Q. Second full paragraph on page 1 of exhibit</p> <p>14 29.</p> <p>15 A. Oh, okay.</p> <p>16 Q. The second sentence says, quote: The</p> <p>17 supply chain 50 rewards companies based on quarterly</p> <p>18 financial information weighing a number of factors</p> <p>19 including overall dollar increase in revenue, revenue</p> <p>20 growth in proportion to their own size, profitability</p> <p>21 posture and improvements, and market share gains as</p> <p>22 analyzed by Aberdeen, quote.</p> <p>23 Do you see that sentence?</p> <p>24 A. I do.</p> <p>25 Q. That all has to do with ePlus and the</p>	<p>334</p> <p>336</p> <p>1 supply chain 50 is clearly financial information for</p> <p>2 the corporation as a whole weighing a number of</p> <p>3 factors including overall dollar increase in revenue,</p> <p>4 revenue growth in proportion to size, profitability,</p> <p>5 posture and improvements, and market share gains as</p> <p>6 analyzed by Aberdeen?</p> <p>7 A. No, I wouldn't -- I wouldn't say that.</p> <p>8 Q. Okay. Are -- do you see in this press</p> <p>9 release any factors identified as factors considered</p> <p>10 in putting a company on the supply chain 50 other</p> <p>11 than the ones I just described?</p> <p>12 A. The reason that we have the link there</p> <p>13 within the press release is because the link will</p> <p>14 pull anybody that's interested to go to the Aberdeen</p> <p>15 Website and understand the criteria of probably what</p> <p>16 was, you know, maybe 10, 20, 50, or a hundred pages</p> <p>17 of criteria that they made all the vendors go</p> <p>18 through.</p> <p>19 Q. Okay.</p> <p>20 A. And there was a lot of criteria that one</p> <p>21 had to go through to be part of the list. And that</p> <p>22 report I'm sure would describe that.</p> <p>23 Q. Okay. So whether or not a document</p> <p>24 external to this press release describes it or not --</p> <p>25 and I understand what you're saying -- but would you</p>	

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 at least agree that within the 4 corners of this 2 press release though, there aren't any other criteria 3 for being on that supply chain 50 list other than the 4 ones I described in paragraph 2? 5 A. If you want to interpret it that way, 6 that's fine. It's not the way I -- I interpret 7 it. 8 Q. Would Aberdeen have access to the revenue 9 growth that's specific to ePlus's procure plus or 10 content plus products? 11 A. No. 12 I think, you know, what the analysts do 13 is, they surmise based upon clients that they 14 interview or talk to and so on, and they are often 15 not that accurate in projections or predictions, but, 16 you know, they don't -- they don't normally involve 17 the vendors that much that I can recall. At times 18 they might, but other times, they don't. 19 Q. Do you know whether or not Aberdeen even 20 estimated what your e-procurement and content plus 21 sales were for purposes of identifying the supply 22 chain 50? 23 A. They may have. I'd have to go back to the 24 report and look at the criteria that they used. 25 Q. You don't know one way or the other though</p>	<p>337</p> <p>1 Whereupon, 2 KENNETH GARY FARBER, 3 the witness testifying at the time of recess, having 4 been previously duly sworn, was further examined and 5 testified further as follows: 6 7 (Lawson Exhibit No. 30 8 was marked for 9 identification.) 10 THE VIDEOGRAPHER: The time is 11 approximately 12:40 PM. We are back on the video 12 record. 13 14 EXAMINATION BY COUNSEL FOR DEFENDANT (RESUMED) 15 BY MR. McDONALD: 16 Q. Mr. Farber, you've been handed exhibit 17 Lawson 30. 18 Do you recognize it? 19 A. Appears to be another ePlus press release. 20 Q. This one relates to ePlus being named on 21 the 2004 supply and demand chain executive magazine's 22 top 100? 23 A. Yes. 24 Q. What is supply and demand chain executive 25 magazine?</p> <p>339</p>
<p>1 as you sit here right now. 2 Right? 3 A. No. 4 I'd have to look at their report. 5 MR. McDONALD: How about if we just put 6 that one aside. 7 We can take a break now. This will be the 8 slightly longer break. 9 THE VIDEOGRAPHER: The time is 10 approximately 12:13 PM. We are going off the video 11 record. Off the record. 12 (Whereupon, at 12:13 p.m., the deposition 13 in the above-entitled matter was recessed, to 14 reconvene at 12:40 p.m., this same day.) 15 16 17 18 19 20 21 22 23 AFTERNOON SESSION 24 (12:40 p.m.) 25</p>	<p>338</p> <p>1 A. It's another trade publication. 2 Q. Is this the list of the top 100 companies 3 that provide supply chain solutions? 4 A. Appears to be. 5 Q. And if you look at the second paragraph, 6 it appears that the criteria include being a provider 7 with financial strength and relevant industry 8 knowledge and expertise whose solutions address 9 specific pain points in the supply chain and which 10 can demonstrate a return on investment and are 11 continuing to drive innovation in their solutions and 12 services offerings. 13 Correct? 14 A. Yeah, that's what it references with the 15 practitioners that we're looking for. 16 Q. Do you know how the magazine collected the 17 information it used to put this list together? 18 A. I would have to go back and refresh my 19 memory on the criteria that they used. 20 Q. Did ePlus submit information to that 21 magazine in an effort to get on that list? 22 A. We very well may have. 23 Q. And the last year, have you done something 24 similar with supply and demand chain executive 25 magazine?</p> <p>340</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

1 A. We might have. 2 Q. Do you know one way or the other? 3 A. I don't know for sure. I'd have to check. 4 Q. There's nothing in this press release that 5 would indicate that that listing on the top 100 6 providers was specifically due to procure plus or 7 content plus. 8 Correct? 9 A. Well, supply and demand chain, the -- my 10 knowledge of the supply and demand chain magazine and 11 our participation in it and what they report on as it 12 relates to ePlus's -- it's pertaining to our supply 13 chain solutions, which were procurement and content 14 in terms of what we would have submitted to them. 15 Q. Do you know one way or the other if you 16 submitted anything to them or what it was you 17 submitted for this press release? 18 A. I'd have to go back like I said at the 19 criteria that we submitted to them. Usually we 20 submit customers and they want to know about 21 functionality of products. 22 Q. What would you have submitted to them 23 about financial strength? 24 A. We typically try to avoid providing any 25 financials. We usually just say that we don't break	341 1 exhibit, please. 2 (Lawson Exhibit No. 31 3 was marked for 4 identification.) 5 BY MR. McDONALD: 6 Q. Mr. Farber, you've been handed exhibit 7 Lawson 31. 8 Do you recognize this document? 9 A. No, I don't. 10 Q. You see on the second page of this 11 document, there's a reference there near the top to 12 the copyright 1996, '97, Fisher Technology Group? 13 A. Yeah, I see that's what it says certainly. 14 Q. Who is Fisher Technology Group? 15 A. My -- 16 MR. ROBERTSON: I'm sorry. 17 Where does it say, '96, '97? 18 Do I have the right -- 19 MR. McDONALD: Page 2 under the logos. 20 MR. ROBERTSON: I've got '96. It says, 21 copyright '96, Fisher Technology Group. 22 MR. McDONALD: It doesn't say '97 on 23 yours? 24 MR. ROBERTSON: No. 25 MR. McDONALD: What's the production
342 1 down financials by product line and to reference our 2 annual reports. 3 Q. Do you believe that you provided them your 4 annual report to address the financial strength 5 issue? 6 A. No. 7 We typically just point them, you know, to 8 public information as we see information, so -- 9 Q. And the public information is about the 10 company as a whole, including the VAR business. 11 Right? 12 A. Yeah. 13 We're -- as a company, you know, we're not 14 permitted to state anything financially that hasn't 15 been publicly stated. 16 Q. Is it your understanding that the public 17 statements regarding ePlus's finances are -- or they 18 include revenues for the company as a whole as 19 opposed to revenues broken down by specific product 20 line like procure plus? 21 A. The product line such as procure plus are 22 not broken out specifically from the overall 23 financials. There are other breakdowns, but that's 24 not one of them. 25 MR. McDONALD: We'll mark this as the next	342 344 1 number on that? 2 MR. ROBERTSON: Well, there's 2, but which 3 one do you want, the one that references the 4 particular litigation? 5 MR. McDONALD: Sure. 6 MR. ROBERTSON: It was produced in 2 7 litigations. It looks like it's ePlus 0134621, dash, 8 62. 9 MR. McDONALD: Okay. 10 MR. ROBERTSON: Excuse me. 11 Dash 22. So mine only has 1996. That's 12 the only point I wanted to make. 13 BY MR. McDONALD: 14 Q. Could I see that exhibit? 15 A. Certainly. 16 Q. That's actually the only difference that I 17 can see, so I think we can muddle through here. 18 A. Okay. 19 Q. So yours just has the '96 year on it; is 20 that correct? 21 A. That is correct, yes. 22 Q. I apologize if you already answered the 23 question, but who is Fisher Technology Group? 24 A. My understanding of Fisher Technology 25 Group was a group that Fisher had established where

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

345	347
<p>1 they did some development work on their product 2 offering of selling their goods and services. 3 Q. Do you have an understanding as to whether 4 Fisher Technology Group created some sort of a 5 Web-based shopping mall? 6 A. The very -- very, very high-level 7 knowledge that Fisher had some form of technology 8 that allowed their customers purchase from them. I 9 don't know how you would characterize that, but they 10 had an application that allowed customers to purchase 11 from Fisher. 12 Q. Okay. Well, are you aware of some 13 application that they called a mall which would allow 14 other suppliers to in effect post their catalogs on 15 the Internet for people to buy from? 16 A. I really don't. I mean, this is probably 17 close to 4 years from when I was -- came on board 18 with procurement. 19 Q. '96, that year, you mean? 20 A. Well, this is dated '96 -- 21 Q. Right. 22 A. -- so I was -- I have no involvement and 23 knowledge of the details of what they did back then. 24 Q. When you were at ePlus, did ePlus ever get 25 involved with having an electronic or Web-based</p>	<p>1 60 people. 2 Q. How many people work for ePlus Inc. as a 3 whole? 4 A. 600 and I think it's 25 or 26 right now. 5 Q. Do you consider ePlus Inc. as a whole to 6 be a small company with over 600 million in revenues? 7 A. On the revenue side, I'd say it's a 8 microcomp- -- mid-sized company, so on the margin 9 side of the business, I consider it a small business, 10 because hardware, which is the bulk that we described 11 earlier in the financials, is a low-margin business, 12 so I -- my opinion is, I consider it a small company, 13 yes. 14 Q. Do you consider Lawson to be a small 15 company, big company, something else? 16 A. I think Lawson is larger in the sense of 17 its geographical reaches, client base, number of 18 people, so in that regard, I think they're larger 19 than ePlus. 20 Q. Do you consider them a small company or a 21 big company or mid-size company? 22 A. I'd say they're bigger than us. I'd say 23 they're a medium to a large player in the software 24 space. 25 Q. From a revenue standpoint, company revenue</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 A. Well, I think they're -- when -- going off 2 recollection, so I can't quote you exact numbers, but 3 I recall in looking at the Website and the product 4 offerings and different things that they did, I think 5 there was a listing of the number of customers or 6 clients that they had worldwide, so -- 7 Q. So you thought the list was longer for 8 Lawson than it is for ePlus? 9 A. That was my recollection, may or may not 10 be accurate. I don't know. I don't have anything to 11 conclusively back that up for you. 12 Q. Did you have in mind when you were doing 13 that comparison just the ePlus clients within your 14 division or the ePlus Inc. client base as a whole? 15 A. I was just looking at it as a whole 16 between companies. That's all. 17 MR. McDONALD: Mark that as the next 18 exhibit, please. 19 (Lawson Exhibit No. 32 20 was marked for 21 identification.) 22 BY MR. McDONALD: 23 Q. Mr. Farber, you've been handed Lawson 24 exhibit 32. 25 Does this appear to be another printout </p>	<p>349</p> <p>1 pieces of the functionality that they used. Procure 2 Net had -- as I know it, had 2 distinct lines of 3 business. 4 Q. What were the 2 lines of business of 5 Procure Net? 6 A. One was the technologies or software 7 applications that we have been talking about, and the 8 other was a sourcing group that actually purchased 9 goods on behalf of organizations that did what we 10 call spot buying. 11 Q. Is it your understanding that procure net 12 was offered to distributors and manufacturers 13 interested in selling products? 14 A. My familiarity with procure net from the 15 time that I was involved in it did sourcing and spot 16 buying based on contracts that they had, and most of 17 their contracts were with either government agencies 18 or those companies that were involved with government 19 agencies, on the sourcing side that is. 20 Q. Okay. If we talk on the technology side, 21 though, do you have an understanding as to whether 22 the procure net technology was at least at some point 23 in time offered by Fisher Technology Group or procure 24 net for distributors and manufacturers interested in 25 selling products? </p>
<p>350</p> <p>1 from Fisher Technology with a copyright 1996 date on 2 it? 3 A. Where are we looking? 4 Q. I see that date on the second page. 5 A. Oh, I'm sorry. 6 Yes, that's correct. That's what it says. 7 Q. Does this document describe the advantages 8 of selling on the Fisher Technology Group's procure 9 net product? 10 A. I don't know if this was -- well, I'm 11 actually confused because I thought procure net -- I 12 didn't know Fisher used that term, procure net. I'm 13 only familiar with this as a company. So -- 14 Q. Is Procure Net the name of the company 15 that Fisher spun off that used to be its technology 16 group? 17 A. That's how I knew it, yes, yes. 18 Q. Do you know whether that spinoff happened 19 before or after 1996? 20 A. I actually don't. 21 Q. But is it your understanding that Procure 22 Net was the name of the company that used the 23 technology that's in the patents involved in this 24 lawsuit? 25 A. Procure Net had -- I don't know what </p>	<p>352</p> <p>1 A. I don't believe from the time that I was 2 there that we -- we offered that. 3 Q. Well, the first page, anyway, under the 4 heading of this exhibit 32 -- 5 A. Yes. 6 Q. -- it says, quote: There are many 7 advantages for distributors and manufacturers 8 interested in selling products through procure net. 9 Do you see that line? 10 A. Yes, I do. 11 Q. So do you have any understanding whether 12 or not before ePlus acquired the procure net-related 13 technology whether or not that technology was offered 14 to distributors and manufacturers interested in 15 selling products? 16 A. I don't have any prior knowledge to know 17 what they were doing or what their intentions were. 18 Q. Is there somebody else at ePlus that would 19 know more about that than you? 20 A. I don't know that there's anybody that was 21 involved in this area of the business that's at ePlus 22 today. 23 Q. Is there anybody outside of ePlus that you 24 know of based on your interaction with the Fisher 25 people that would know about this? </p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 A. You know, I think -- I wasn't really 2 involved with that group, so, you know, it's 3 something I could look at, but there's nobody that 4 pings to mind right now. It was a different division 5 group there that was doing this stuff.</p> <p>6 We're done with this?</p> <p>7 Q. Yeah, we're done with that.</p> <p>8 MR. McDONALD: Mark that as the next 9 exhibit.</p> <p>10 (Lawson Exhibit No. 33 11 was marked for 12 identification.)</p> <p>13 BY MR. McDONALD:</p> <p>14 Q. We're going to turn now to some questions 15 and documents involving Novant.</p> <p>16 Okay?</p> <p>17 A. Okay.</p> <p>18 Q. So you've got before you, Mr. Farber, what 19 was marked as exhibit 33.</p> <p>20 A. Yes.</p> <p>21 Q. Do you recognize this document?</p> <p>22 A. Not particularly, but it looks like a 23 presentation to Novant.</p> <p>24 Q. What was your role in responding to the 25 Novant request for proposals?</p>	<p>353</p> <p>1 help you put together a response for whatever changes 2 they wanted to make to their system; is that right?</p> <p>3 A. Well, not changes they make. That's hard 4 to tell from here. This is the current state.</p> <p>5 Q. Right.</p> <p>6 This doesn't talk about what the changes 7 are going to be; is that right?</p> <p>8 A. It's scanning it from what I can see. I 9 don't think that it's outlining the 2 B state and 10 what they were looking at doing. It's giving an 11 indication of what they're going today.</p> <p>12 Q. But is it your understanding that the 13 reason why they were telling you what they were doing 14 at least on that day was to give you that background 15 so that you could provide a better response to their 16 request?</p> <p>17 A. This would be one of the components of the 18 information that they would provide perhaps, yeah.</p> <p>19 Q. Did they provide other components other 20 than the state of their system at the time?</p> <p>21 A. Oh, I'm sure they may have.</p> <p>22 I mean, generally what occurs and I can't 23 speak -- I'd have to look back -- you know, many 24 clients -- or prospects I should say provide RFIs, 25 requests for information, or request for proposals,</p>	<p>355</p>
<p>1 A. I wasn't engaged directly with the 2 customer, so I didn't -- I don't -- I wouldn't say 3 that I had much of a role.</p> <p>4 Q. Did you get involved at an approval level, 5 on a directional level?</p> <p>6 A. I may have in a formal response. I may 7 have reviewed the formal response and given approval, 8 whether it be on an RFP or a final pricing.</p> <p>9 Q. Was there someone else that had primary 10 responsibility for responding to Novant?</p> <p>11 A. I would have to see who was involved in 12 the response to provide a name.</p> <p>13 Q. This document, does it appear to you 14 anyway to be a PowerPoint from Novant that was 15 providing background information for responding to 16 their RFP?</p> <p>17 A. Well, just give me -- if I can have a 18 minute?</p> <p>19 Q. Sure.</p> <p>20 (Pause.)</p> <p>21 A. It appears that it would have -- would be 22 a Novant PowerPoint.</p> <p>23 BY MR. McDONALD:</p> <p>24 Q. So they're trying to give some background 25 to you so you know how their current system is to</p>	<p>354</p> <p>1 so I suspect if Novant provided this information, 2 then it was done under some form of confidentiality 3 to the vendors in order to address wherever it is 4 that they wanted to go.</p> <p>5 Q. In the course of responding to the Novant 6 RFP, did you review any information that related to 7 their existing product and system that they were 8 using from Lawson?</p> <p>9 A. I'd have to look at the -- our response, 10 because this doesn't tell me what we needed to do. 11 It doesn't tell me if they were keeping Lawson, not 12 keeping Lawson, how they wanted to integrate with 13 Lawson, if there was integration involved.</p> <p>14 So I'd have to link this up with their 15 RFI, RFP, if it existed, and our formal response, and 16 see how we handled that.</p> <p>17 Q. Okay. Can you turn to the third page of 18 exhibit 33.</p> <p>19 A. How are purchase orders created?</p> <p>20 Q. Yes.</p> <p>21 A. Okay.</p> <p>22 Q. Is it your understanding that this is a 23 document from Novant describing their then current 24 system before the RFP at the time of their request?</p> <p>25 A. This appears to be, you know, their</p>	<p>356</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 description of how they're currently using the 2 systems today, sure.</p> <p>3 Q. Do you see the first bullet point there?</p> <p>4 It says, quote: From Lawson requisition 5 self-service using shopping lists specific to the 6 end-user, quote.</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. Do you have an understanding as to that 10 that means?</p> <p>11 A. I have no clue.</p> <p>12 MR. McDONALD: Next exhibit, please.</p> <p>13 (Lawson Exhibit No. 34 14 was marked for 15 identification.)</p> <p>16 BY MR. McDONALD:</p> <p>17 Q. Mr. Farber, you've been handed exhibit 34. 18 Based on the first page of this document, 19 does it look like this is ePlus's response to Novant 20 Health's request for a proposal on a procure to pay 21 system?</p> <p>22 A. It does.</p> <p>23 Q. This is dated March 20, 2009.</p> <p>24 Correct?</p> <p>25 A. Correct.</p>	<p>357</p> <p>1 have a conference call with Will, and based on the 2 questions, they know who at ePlus may have answers to 3 these questions, and then they divvy out pieces of 4 the RFP and then bring the answers back in to one 5 full document.</p> <p>6 He's ultimately responsible to make sure 7 that people having the conference calls that this 8 main group is responsible for ensuring that people 9 are answering the questions.</p> <p>10 Q. So who ultimately gave final approval to 11 this response?</p> <p>12 A. Let me see the date on it.</p> <p>13 I may have, or somebody else may have in 14 my absence.</p> <p>15 Q. On the second page, do you see near the 16 middle of Mr. Thomas's letter to Novant, there's a 17 reference to JV Kelly Group?</p> <p>18 A. Yes, I do.</p> <p>19 Q. And it says here, ePlus has teamed with 20 the JV Kelly Group.</p> <p>21 Right?</p> <p>22 A. Yes.</p> <p>23 Q. Who is the JV Kelly Group?</p> <p>24 A. JV Kelly is -- I think they've since been 25 acquired, but they were a consulting organization</p>	<p>359</p>
<p>1 Q. Out in the upper left corner, do you see 2 that the contact information at ePlus is Will Thomas?</p> <p>3 A. Yes.</p> <p>4 Q. Was Will Thomas in charge of putting this 5 response together for Novant?</p> <p>6 A. He would have been the sales 7 representative, customer-facing sales representative.</p> <p>8 Q. Was he responsible for putting the RFP 9 response together or not?</p> <p>10 A. Not necessarily.</p> <p>11 He was responsible for submitting that 12 into our group that manages responses, and then work 13 is divvied out to various players to provide answers 14 to various sections.</p> <p>15 Q. Is seeing his name on here and seeing this 16 document now -- and feel free to thumb through it if 17 you'd like -- does this give you an indication of who 18 probably was in charge of responding to the Novant 19 RFP?</p> <p>20 A. That doesn't -- no. I don't need to thumb 21 through it to give you an answer.</p> <p>22 Will Thomas is responsible for the 23 relationship with the prospect, in this case, Novant.</p> <p>24 He submits a request if we got a formal RFP to a 25 central group at ePlus, who then is responsible to</p>	<p>358</p> <p>1 that may -- I think had certain products in certain 2 areas, but their primary revenue source was project 3 management and consulting.</p> <p>4 Q. Can you tell by looking at this 5 document -- is this the final version of it as 6 provided to Novant?</p> <p>7 A. It would appear that it would be. I can't 8 conclusively say that there wasn't a subsequent one 9 that was ultimately sent to them, but it would appear 10 so.</p> <p>11 Q. I'd like you to keep that document handy 12 and I'm going to mark another one now.</p> <p>13 Okay?</p> <p>14 A. Sure.</p> <p>15 MR. McDONALD: Thank you.</p> <p>16 (Lawson Exhibit No. 35 17 was marked for 18 identification.)</p> <p>19 BY MR. McDONALD:</p> <p>20 Q. Okay. So what I'd like to do now with 21 exhibit 34 that was already in front of you, 22 Mr. Farber --</p> <p>23 A. Yes.</p> <p>24 Q. -- can you turn to the page number last 5 25 digits 3 -- 432891. I guess that's 6 digits.</p>	<p>360</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

361	363
<p>1 A. Yes. Okay.</p> <p>2 Q. Put that kind of on your left there. And</p> <p>3 then on your right, can you have page 2 of Lawson</p> <p>4 exhibit 35.</p> <p>5 That page is fine. There you go.</p> <p>6 A. Right.</p> <p>7 Q. Okay. Is page 2 of exhibit 35 the color</p> <p>8 version of the figure that's on page 432891 of</p> <p>9 exhibit 34?</p> <p>10 A. Yes, it is. Yeah, they look like they</p> <p>11 match up.</p> <p>12 Q. Can you help me understand why ePlus is</p> <p>13 coded in exhibit 35 as having the yellow box -- boxes</p> <p>14 and the blue boxes?</p> <p>15 Why wouldn't you put ePlus with the same</p> <p>16 color?</p> <p>17 A. I have no clue. Maybe somebody's artistic</p> <p>18 impression. I don't know. Oh -- I don't know.</p> <p>19 Q. In any event, the yellow box, that</p> <p>20 includes the supplier portal and catalogs blocks.</p> <p>21 Correct?</p> <p>22 A. The yellow?</p> <p>23 Yes.</p> <p>24 Q. And then the blue one, which is the other</p> <p>25 ePlus color, that's goes the 5 boxes reporting spend</p>	<p>1 The box that says, suppliers, if I'm</p> <p>2 interpreting it correctly -- and again I'd have to go</p> <p>3 through all the schematics that may be in the</p> <p>4 response -- so I'm doing my interpretation here.</p> <p>5 Q. Okay.</p> <p>6 A. It would appear to me that supplier</p> <p>7 diversity information, there may have been a</p> <p>8 requirement by Novant to have that information as</p> <p>9 part of the catalog, so that supplier diversity</p> <p>10 information is flowing between that system that Dun &</p> <p>11 Bradstreet had and our supplier portal in order to</p> <p>12 build a catalog with that additional information,</p> <p>13 which would have been attributes associated with</p> <p>14 those items.</p> <p>15 Q. Okay. In the drawing, though, between the</p> <p>16 supplier portal and supplier diversity, there's a box</p> <p>17 called, suppliers.</p> <p>18 Right?</p> <p>19 A. Yes.</p> <p>20 Q. And that's meant to represent parties</p> <p>21 other than ePlus, JV Kelly, and D&B.</p> <p>22 Right?</p> <p>23 A. I think it may represent the customers'</p> <p>24 suppliers that they do business with.</p> <p>25 Q. Right.</p>
362	364

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 where why we may have depicted it that way.</p> <p>2 Q. All right. You can put exhibit 35 anyway</p> <p>3 to the side.</p> <p>4 A. Which one was 35?</p> <p>5 Q. The one on the right with the colors.</p> <p>6 A. Okay. Fix that.</p> <p>7 Q. If we return now to exhibit 34, and can</p> <p>8 you go up to the page lower right corner number</p> <p>9 432900, please.</p> <p>10 A. 900. Okay.</p> <p>11 Q. This page has in the middle of a part of</p> <p>12 the page a list of supplier portal features; is that</p> <p>13 right?</p> <p>14 A. Yes.</p> <p>15 It appears to list some of the features of</p> <p>16 the portal.</p> <p>17 Q. The fifth bullet point down has the</p> <p>18 heading, compare products.</p> <p>19 Correct?</p> <p>20 A. I see that, yes.</p> <p>21 Q. Now, it says, quote: After requisitioners</p> <p>22 search for products, they can conveniently compare</p> <p>23 products using the discovery catalog, quote.</p> <p>24 Do you see that sentence?</p> <p>25 A. I do see it.</p>	<p>365</p> <p>1 A. It would be -- they'd be going into</p> <p>2 procure plus, yes.</p> <p>3 Q. And then the step of conveniently</p> <p>4 comparing products using the discovery catalog, where</p> <p>5 in the ePlus system does that happen?</p> <p>6 A. Well, I think it's part of the catalog</p> <p>7 search capability.</p> <p>8 Q. Which -- is that in the catalog plus</p> <p>9 part --</p> <p>10 A. Yeah, you could refer to it as the</p> <p>11 catalog -- catalog plus.</p> <p>12 Q. What is the discovery catalog?</p> <p>13 A. That just seems like a very interesting</p> <p>14 marketing term that somebody threw in there that</p> <p>15 we're trying to show that they could discover items</p> <p>16 in the catalogs.</p> <p>17 Q. Okay. Is that a new one in terms of what</p> <p>18 you've heard of before?</p> <p>19 A. You know, every time I look at this, I see</p> <p>20 a new word and I go, where did somebody come up with</p> <p>21 that one, so --</p> <p>22 Q. But it's the same catalog we've been</p> <p>23 talking about --</p> <p>24 A. It's the catalog, yes.</p> <p>25 Q. -- all along?</p>	<p>367</p>
<p>1 Q. All right. Is that a feature of the</p> <p>2 supplier portal, or is that a feature of some other</p> <p>3 part of the ePlus system?</p> <p>4 A. The portal has -- uses the same catalog as</p> <p>5 the procurement system. What ultimately the portal</p> <p>6 populates is the catalog.</p> <p>7 Q. The portal populates the catalog?</p> <p>8 A. The output of the data coming from the</p> <p>9 portal. It's the tool that we use to create the</p> <p>10 catalog.</p> <p>11 Q. Okay. So it creates the catalog, but this</p> <p>12 particular bullet point is talking about after a</p> <p>13 search, there could be a comparison.</p> <p>14 Right?</p> <p>15 A. Let me just go back to where we were</p> <p>16 talking about.</p> <p>17 I'm sorry.</p> <p>18 Q. M-hm.</p> <p>19 A. It's saying here that the requisitioners</p> <p>20 can search and they can compare, yes.</p> <p>21 Q. Where does that search for product by a</p> <p>22 requisitioner take place in the ePlus system as being</p> <p>23 proposed here?</p> <p>24 A. It's in the procurement system.</p> <p>25 Q. It's in procure plus?</p>	<p>366</p> <p>1 The next sentence, quote -- well, before</p> <p>2 we go on to the next sentence, the compare -- the</p> <p>3 conveniently compare products step, is that the</p> <p>4 side-by-side comparison that's up on the user screen</p> <p>5 that we talked about earlier?</p> <p>6 A. That's one of the ways, sure.</p> <p>7 Q. What other ways can the user conveniently</p> <p>8 compare products using the catalog?</p> <p>9 A. Well, it's the representation, whether</p> <p>10 it's side by side or it's -- remember we were talking</p> <p>11 about horizontal, vertical, the representation of how</p> <p>12 it looks on the screen.</p> <p>13 Q. Okay. So it's either left, right, or top,</p> <p>14 bottom?</p> <p>15 A. Yeah, how it's set up and how the users</p> <p>16 prefer to see things.</p> <p>17 Q. Okay. Are there any other ways that the</p> <p>18 ePlus system allows users to conveniently compare</p> <p>19 products other than either top, bottom or left,</p> <p>20 right?</p> <p>21 A. You know there may be, but I don't -- I'm</p> <p>22 not sure they'd be widely used, or there may be some</p> <p>23 little feature in there I'm unfamiliar with.</p> <p>24 Q. Okay. In the next sentence, quote: It</p> <p>25 displays product information for multiple commodities</p>	<p>368</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

369	371
<p>1 in a tabular or graphical format enabling users to 2 compare product descriptions, pricing, manufacturers, 3 and other attributes, quote. 4 Do you see that sentence? 5 A. I do. 6 Q. So does that indicates that with either 7 the top, bottom or side to side that could either be 8 a table of words or it could be a graphical format? 9 A. I don't -- it's basically a comparison as 10 it says, that you could compare product descriptions 11 and pricing and manufacturers or other attributes. 12 And it could -- you know, what it's trying to point 13 out is, you could look at it different ways as we 14 were talking about before. 15 Q. Yeah. 16 So would the tabular format be some sort 17 of a table or there might be a row for product and A 18 a row for product B, and then on the left side, you 19 have a bunch of -- those be columns I guess, and then 20 you have a bunch of rows for the different attributes 21 so that they could compare side by side? 22 A. Yeah, associated with those. 23 Q. And so that would be the tabular format. 24 Would the graphical format basically just 25 be kind of shots of the catalog excerpts for the</p>	<p>1 of procure plus in March of 2009? 2 A. 6.8? 3 What was the date? 4 Q. March -- 5 A. It might have been at that -- at that 6 time. 7 Q. All right. And hosted, this was the 8 proposal to Novant, is that ePlus would host this 9 environment for them? 10 A. I don't know if they wanted both hosting 11 and enterprise. Leads me to believe without 12 necessarily seeing the questions that typically when 13 people ask if, you know, if we host, they want to see 14 how we plan on putting the application within the 15 hosting subject. 16 Q. Under the left side of this picture, it 17 says, shared resources, at the top. 18 Right? 19 A. Yes. 20 Q. The last 2 boxes on the left side there 21 are catalog publishing server and catalog free form 22 server. 23 Correct? 24 A. Yes, I see that. 25 Q. What's -- what's the difference between a</p>
370	372
<p>1 different products? 2 A. Yeah. 3 I'm trying to decipher the term graphical 4 and whoever the author was, how they represented 5 graphical. I'm not quite sure to be honest with you. 6 Q. Okay. There is an alternative format 7 though to that tabular format to display product 8 comparisons side by side or top, bottom? 9 A. I don't -- I don't believe so. I think 10 it's -- you're either looking at in the ways that 11 we've previously discussed. And there may be like I 12 said some other little feature there that has some 13 nice little whiz-bang way of viewing the data. 14 I just don't recall what it might be. 15 Q. Could you move forward to the page marked 16 lower right 432902. 17 A. Okay. 18 Q. This is referring to produce plus 6.8, 19 hosted production environment physical presentation. 20 Right? 21 A. Okay. 22 Q. You see that heading anyway. 23 Right? 24 A. I do, yes. 25 Q. So 6.8, is that the then current version</p>	<p>1 catalog publishing server and a catalog free form 2 server? 3 A. My recollection is, I think the difference 4 in those is, we use a separate server to move the 5 data once the catalogs are created for the customer 6 to the production environment, so it just does a push 7 of the data, of the information. 8 Q. Is the push to the publishing server? 9 A. It's done to the production catalog. 10 You see where it says, the catalog 11 database? 12 Q. I see -- yes, over to the right between 13 procure plus database -- 14 A. That's right. 15 Q. -- and content plus, there's a catalog 16 database? 17 A. That's right, that's right. 18 Q. All right. So catalog database, is that 19 different from the catalog publishing server and the 20 catalog free form server? 21 A. Yeah. 22 It's a separate server that we're using to 23 move data around within -- it's all test data. It's 24 our environment that my folks use that I believe is 25 used for them to set up environments and move data</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

1 around before things get into production. 2 Q. Does data move from the catalog publishing 3 server there on the left over to the catalog database 4 on the right? 5 A. It may. It very well may, not as part of 6 production, though, in the use of the system. It's 7 all used for the setup from what I recall. 8 Q. What is used for setup? 9 A. The publishing server. 10 Q. Okay. And then the catalog free-form 11 server, is that also used in the publishing process? 12 A. I don't know if -- I believe it is, and 13 that's the other stuff that we talked about, the 14 services that we performed to enhance data for 15 customers and provide services. 16 Q. Does that have to do with standardizing 17 the catalog data? 18 A. If they want us to perform that as a 19 service for them, I believe that that's what that may 20 refer to, so not always used. 21 Q. And catalog database, that includes the 22 catalogs of supplier products? 23 A. That's the catalogs of the suppliers. 24 Q. What's in the procure plus database on the 25 left in the picture here?	373 1 features in it to show the delta analysis between 2 what was given to us before and what may have been 3 changed or obsoleted as far as the products are 4 concerned. 5 Q. And above that, content plus, slash, SP 6 database. 7 Do you see a box for the content plus SP 8 server? 9 A. Yes, I do. 10 Q. That's also for the supplier portal? 11 A. That's right. 12 Q. All right. Done with that. 13 A. Okay. 14 MR. McDONALD: Mark that as the next 15 exhibit, please. 16 (Lawson Exhibit No. 36 17 was marked for 18 identification.) 19 BY MR. McDONALD: 20 Q. Mr. Farber, you've been handed -- 21 MR. McDONALD: Is it exhibit 35? 22 THE COURT REPORTER: 36. 23 BY MR. McDONALD: 24 Q. -- 36. 25 A. Yes, that's correct.	375
374 1 A. That's commodity code structures, general 2 ledger rules, the integration points with the 3 accounting system. 4 Q. Anything else? 5 A. Well, it houses all the rules for the 6 procurement application in terms of how the customer 7 wants it to be configured. 8 Q. What is in the content plus, slash, SP 9 database to the right of the catalog database? 10 A. That's our supplier portal database, and 11 that's the database that we use if we're providing a 12 service to enable suppliers for our customers. 13 Q. So will suppliers that use the portal 14 transmit information in the first instance to that 15 content plus, slash, SP database? 16 A. If clients want us to help them maintain 17 catalogs, then that's a tool -- we were talking I 18 think -- I don't know if it was earlier today or 19 yesterday -- about our supplier portal and what it 20 does. 21 This is the system that I was referring 22 to, which is the tool that's used, the utility that's 23 used to create catalogs, see what changed in the 24 future if -- if a supplier gives us another upload of 25 data and something has changed, it has some nice	374 1 Q. Is that an email dated February 15, '08? 2 A. That's what it says, yes. 3 Q. It's from Drew Burford. 4 Right? 5 A. Yes. 6 Q. Who is Drew Burford? 7 A. He used to be a junior-level salesperson 8 for ePlus -- 9 Q. Where is he now? 10 A. -- account manager. 11 I don't know where he's gone to. 12 Q. Has he left the company? 13 A. Mutually left the company, yes. 14 Q. Who is Paul Jarboe? 15 A. Paul Jarboe is -- plays a number of roles 16 at ePlus. He is a product analyst in one sense that 17 works to ensure that our product does what it says it 18 does and gives his opinions of where he thinks it 19 should be. He also works with our clients on their 20 implementations. 21 Q. Who is Jay Raulerson? 22 A. He's a presales demo consultant. 23 Q. Now, the subject of this email is Lawson 24 meeting. 25 Do you see that?	376

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 A. I do.</p> <p>2 Q. Was there a meeting involving Lawson</p> <p>3 around February 15th, 2008?</p> <p>4 A. Well, let's see what it says.</p> <p>5 (Pause.)</p> <p>6 A. I think it is from what I'm gathering in</p> <p>7 reading this, that it was information that these</p> <p>8 individuals, more specifically -- or more probably</p> <p>9 Drew ascertained from Cleveland Clinic.</p> <p>10 BY MR. McDONALD:</p> <p>11 Q. That's what CCF stands for?</p> <p>12 A. Yes.</p> <p>13 That's what I believe this to be.</p> <p>14 Q. What is your understanding as to how the</p> <p>15 information provided in this email was gathered?</p> <p>16 A. My view of it would be that Drew probably</p> <p>17 had a conversation with Cleveland Clinic. They</p> <p>18 provided him with some base information, and he --</p> <p>19 he's reporting back.</p> <p>20 Q. So that first bullet point 1 in terms of</p> <p>21 the notes from Lawson meeting says, quote: They are</p> <p>22 no-bidding this RFP as they do not have the catalog</p> <p>23 services necessary, quote.</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>	<p>377</p> <p>1 whoever the service provider was, whether internal or</p> <p>2 external, and they want to build better catalogs for</p> <p>3 their systems.</p> <p>4 Q. Do you know one way or the other whether</p> <p>5 or not Cleveland Clinic told ePlus that Lawson was</p> <p>6 not bidding for the RFP because Lawson did not have</p> <p>7 the catalog services necessary?</p> <p>8 A. I don't -- I don't know that, no.</p> <p>9 Q. Mr. Burford would know that?</p> <p>10 A. He -- I would imagine he may know that. I</p> <p>11 don't know.</p> <p>12 Q. The fourth bullet point there says, quote:</p> <p>13 CCF can elect to turn on Lawson's e-pro punchout</p> <p>14 capability to access ePlus catalog or punchout sites,</p> <p>15 quote.</p> <p>16 Do you see that?</p> <p>17 A. I do see that, yes.</p> <p>18 Q. Can you explain to me what that means?</p> <p>19 A. I think this is Drew saying that -- you</p> <p>20 know, in his interpretation I think he's trying to</p> <p>21 come up with whatever solution he thinks will fit the</p> <p>22 criteria that -- that there's a punchout capability</p> <p>23 that if we wanted to replace our catalog with</p> <p>24 whatever they may be using of the Lawson system that</p> <p>25 that's something that could very well be done.</p>
<p>1 Q. So is it your understanding here that</p> <p>2 Mr. Burford is indicating that based on his</p> <p>3 information from Cleveland Clinic or wherever, he</p> <p>4 found out that Lawson was not bidding on the</p> <p>5 Cleveland Clinic RFP because they did not have the</p> <p>6 catalog services that Cleveland Clinic was looking</p> <p>7 for?</p> <p>8 MR. ROBERTSON: Objection, lacks</p> <p>9 foundation.</p> <p>10 A. No.</p> <p>11 I don't know if I can interpret it that</p> <p>12 way.</p> <p>13 BY MR. McDONALD:</p> <p>14 Q. What else would it mean?</p> <p>15 A. Well, again, you know, I'm surmising who</p> <p>16 had the conversation with who.</p> <p>17 Right?</p> <p>18 So given that, you know, it could also</p> <p>19 mean the Cleveland Clinic is not bidding out the RFP,</p> <p>20 and perhaps they don't have the catalog services that</p> <p>21 are necessary.</p> <p>22 Now, those catalog services is a broad,</p> <p>23 broad topic, and what that could mean, it could mean</p> <p>24 that, you know, they may have catalogs, but they</p> <p>25 don't like how the suppliers are being managed by</p>	<p>378</p> <p>1 Q. Did you have an understanding as to</p> <p>2 whether as of February of '08, Cleveland Clinic had</p> <p>3 or had not turned on the Lawson punchout capability?</p> <p>4 A. No, I don't -- I don't -- I don't have any</p> <p>5 indication of -- of when they may or may not have</p> <p>6 done something in that regard.</p> <p>7 Q. Paragraph 7 says, quote: Lawson has</p> <p>8 agreed to validate our integration strategy, dash,</p> <p>9 Paul, any docs you recommend to send to Lawson</p> <p>10 product management to accomplish this, question mark.</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Can you explain what that means?</p> <p>14 A. Well, again, I'd have to go through our</p> <p>15 proposal, but the integration could be a number of</p> <p>16 different things.</p> <p>17 It could be at the catalog site of the</p> <p>18 house. It could be at the AP -- accounts payable and</p> <p>19 general ledger level of integration. It certainly is</p> <p>20 not uncommon to have what I refer to as co-optition,</p> <p>21 where we may compete in one area but need to work</p> <p>22 side by side in another area together.</p> <p>23 So they may have been validating a number</p> <p>24 of different integration points. I don't know all</p> <p>25 the applications that were necessarily in play with</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 this response, so that would be my view of what may 2 have occurred.</p> <p>3 Q. Is it your understanding that as of the 4 time of this email, February of '08, Lawson's system 5 at Cleveland Clinic was already using Lawson's 6 requisition self-service functionality?</p> <p>7 A. I think at the time of -- as this was 8 written on February 15th of '08, it says that all of 9 the Cleveland Clinic facility or current users, they 10 use Lawson's requisition service, including research, 11 and they must continue to stay in compliance with 12 grants.</p> <p>13 And then it says, see below.</p> <p>14 Q. Do you have an understanding as to what 15 Lawson's requisition self-service system does?</p> <p>16 A. No.</p> <p>17 I'm not familiar with the details and the 18 analysis of those systems.</p> <p>19 Q. Was the integration strategy that's 20 referenced in paragraph 7 a strategy for integrating 21 what the Lawson system, including the Lawson 22 requisition self-service system?</p> <p>23 A. I don't know. I'd have to reference other 24 documents to determine that.</p> <p>25 Q. Below the 10 bullet points, there's a</p>	<p>381</p> <p>1 think Lawson knew the extent of the threat SciQuest 2 poses until our conversation, isn't that pretty clear 3 to you that he's talking about the conversation 4 between him and somebody at Lawson?</p> <p>5 A. Well, let me just re-read it, and I 6 will --</p> <p>7 (Pause.)</p> <p>8 A. I guess you can interpret that as well.</p> <p>9 I just -- I don't know enough detail to 10 determine that. I can see it both ways.</p> <p>11 BY MR. McDONALD:</p> <p>12 Q. In the first sentence in that paragraph, 13 what is your understanding as to what the neutral 14 position is about?</p> <p>15 A. I haven't a clue. I don't -- I don't know 16 the details of the conversations that -- that had 17 transpired.</p> <p>18 (Discussion off the record.)</p> <p>19 THE VIDEOGRAPHER: The time is 20 approximately 1:37 PM. We are going off the video 21 record. Off the record.</p> <p>22 (Recess.)</p> <p>23 (Lawson Exhibit No. 37 24 was marked for 25 identification.)</p>	<p>383</p>
<p>1 sentence that says, quote: Lawson has taken a 2 neutral position on this, quote.</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. Then the next sentence, quote: I do not 6 think they knew the extent of the threat SciQuest 7 poses until our conversation, quote.</p> <p>8 Do you see that sentence?</p> <p>9 A. I do.</p> <p>10 Q. Now, this would indicate, wouldn't it, 11 that ePlus actually had a conversation directly with 12 Lawson about the Cleveland Clinic matter?</p> <p>13 A. No, not necessarily.</p> <p>14 They -- they could have gotten -- you 15 know, Drew could have received from Cleveland Clinic 16 an indication that they may have said, hey, Lawson 17 doesn't care which position you take, they're 18 neutral.</p> <p>19 That could have come from Lawson's field, 20 and then Drew may have just been following up saying, 21 hey, you know, they may not know the extent of the 22 threat that it poses.</p> <p>23 And then it says, as our relationship 24 progresses with Lawson, we may find out more.</p> <p>25 Q. But when it says there that he doesn't</p>	<p>382</p> <p>1 THE VIDEOGRAPHER: The time is 2 approximately 1:48 PM. We are back on the video 3 record.</p> <p>4 BY MR. McDONALD:</p> <p>5 Q. Mr. Farber, I wanted to stick with exhibit 6 36 for just another question or 2 here.</p> <p>7 A. Certainly.</p> <p>8 Q. Under bullet 2, there is a reference there 9 to, Cleveland Clinic currently uses Lawson's 10 requisition self-service.</p> <p>11 Right?</p> <p>12 A. Yes, that's what it says.</p> <p>13 Q. ePlus did bid for the Cleveland Clinic 14 work around that February 2008 time frame or 15 thereafter; is that right?</p> <p>16 A. My recollection is there were 2 elements 17 of Cleveland Clinic.</p> <p>18 One is, there was a belief in conversation 19 that Cleveland Clinic may have been determining if 20 they were going to stay with whatever Lawson system 21 they had that was doing requisitioning. And at one 22 point, we were looking at the possibility of selling 23 our procurement and catalog solutions to them.</p> <p>24 I think ultimately, they determined -- if 25 my recollection serves me correctly -- that they were</p>	<p>384</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 going to continue with whatever Lawson system they 2 were using, and potentially looking at our catalog 3 solution.</p> <p>4 Q. Did they go with somebody else's catalog 5 solution?</p> <p>6 A. I believe -- and again, recollection is 7 that Lawson may have had a relationship with SciQuest 8 and that they used the SciQuest catalog ultimately.</p> <p>9 Q. Had Cleveland Clinic indicated that they 10 were going to stay with Lawson's requisition 11 self-service but use the ePlus catalog, would ePlus 12 have found a way to accommodate Cleveland Clinic and 13 integrate their catalog functionality with Lawson's 14 requisition self-service?</p> <p>15 A. Yeah.</p> <p>16 I don't know what -- what -- what they 17 were lacking at the catalog level and what they were 18 doing with whatever was referred to as the 19 requisition self-service. I'm not familiar with the 20 application in detail.</p> <p>21 But I know we did respond to a request for 22 information on our catalog component, and we did 23 propose that solution.</p> <p>24 Q. And was it your understanding that the 25 solution proposed by ePlus would have given Cleveland</p>	<p>385</p> <p>1 allows it to be used for searching. 2 Q. Okay. 3 A. So technically it doesn't have to be. 4 Q. I see. 5 So you could still buy the catalog module 6 as a stand-alone module and search the catalog?</p> <p>7 A. That's correct. 8 Q. But if a prospect wanted to use the 9 catalog with procurement or requisitioning, they'd 10 have to have somebody's electronic procurement 11 module.</p> <p>12 Right?</p> <p>13 A. They would have to have some form of a -- 14 if they wanted to use it in the context of 15 procurement, there are differences in every 16 procurement system, but we would certainly look to 17 potentially enable that solution for them if we 18 could.</p> <p>19 Q. Does a customer typically -- let me word 20 it a little differently. I'll withdraw that.</p> <p>21 Do most customers that -- or most 22 prospects that are seeking the procure plus 23 product -- do they already have some sort of an 24 electronic system in place?</p> <p>25 MR. ROBERTSON: Object to the form of the</p>	<p>387</p>
<p>1 Clinic the option of using the ePlus catalog with the 2 existing Lawson system?</p> <p>3 A. Whatever components of Lawson that they 4 may have been using. I'd have to look at the 5 proposal to see if it discusses the integration 6 levels and however it was being referred to.</p> <p>7 Q. Has ePlus had other situations where 8 prospects that had somebody else's requisitioning 9 computer electronic system were looking to add to the 10 capabilities of the system by adding catalog 11 functionality like ePlus provides?</p> <p>12 A. I believe that there's a situation where a 13 client of ours has an Ariba system that we're 14 providing -- it's either Ariba or SAP. I don't 15 recall -- that we're providing catalog systems to.</p> <p>16 Q. Is it true that the catalog system needs 17 to work with some sort of an electronic 18 requisitioning system?</p> <p>19 A. No.</p> <p>20 It could stand on its own as well.</p> <p>21 Q. How would you do requisitioning if it 22 doesn't have a requisition system with it?</p> <p>23 A. You don't have to necessarily.</p> <p>24 I mean, it's a -- there's a separate 25 component to the -- to the catalog option that just</p>	<p>386</p> <p>388</p> <p>1 question. 2 BY MR. McDONALD: 3 Q. That was pretty vague, wasn't it? 4 A. Yeah, I was going to ask -- 5 Q. Let me rephrase that. 6 Do most of the prospects for ePlus's 7 procure plus products have an electronic ERP system 8 in place already? 9 A. When you say, ERP, are you -- are you 10 referring -- what component of ERP as a broad space 11 as we've discussed? 12 I'm sorry. 13 Q. Let me ask it this way, then. 14 Maybe I'll have you fill in the blank. 15 A. Okay. 16 Q. What sort of modules or functionality do 17 prospects already have in place in terms of 18 electronic resource planning typically when they're 19 in the market for a product like procure plus? 20 A. Okay. So there are a number of 21 occurrences or instances that we could refer to. 22 One is, most companies today have a 23 back-office accounting system managing their accounts 24 payable, general -- general ledger from a variety of 25 vendors.</p>	

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 And that becomes an element of potential 2 integration where they wanted to connect the 2 3 systems. There's some customers that do not have any 4 form of requisitioning in place today and are looking 5 to create an electronic procurement system. 6 There's a third class that have a 7 procurement system in place but are looking to 8 potentially reduce the cost that they incur with 9 their existing vendor and will be bidding for 10 alternatives because their contract may be coming up 11 for term, for example. 12 So these are the immediate ones that come 13 to mind. I'm sure there's many other delineations 14 and occurrences of why that might happen, but those 15 are the ones that come to mind. 16 Q. Do most of the prospects at least have 17 some form of electronic inventory control already? 18 A. No, not necessarily. 19 Q. Well, do you know whether it's more or 20 less than half? 21 A. I don't -- don't know. 22 The reason I say I don't know is, it's not 23 always a requirement depending on the goods and 24 services that they plan on using through the 25 purchasing system that they get tied into their</p>	<p>389</p> <p>1 A. I think the majority of our contracts seem 2 to run -- the initial terms are somewhere between 3 3 to 5 years. 4 Q. Is that pretty representative of the 5 length of the contracts that your competitors get to? 6 A. I wish I knew. I'd be in a better 7 position if I did. 8 Q. But at least a number of your 9 opportunities that come up are in situations where 10 somebody else's contract is about to expire and 11 they're -- the prospect is now looking at options 12 again? 13 A. No. 14 I didn't say that. 15 I said earlier there's -- you know, it 16 goes in waves. 17 Right? 18 So there's times where they don't have 19 anything, and then all of a sudden there's times when 20 they're looking to replace things. 21 Q. Okay. But over the course of let's say 22 the last 2 or 3 years then, at least a significant 23 portion of the prospects who had existing electronic 24 systems with contracts that were expiring? 25 A. No.</p>
<p>1 inventory system. 2 Q. Do more than half of the prospects have at 3 least some sort of electronic accounting system in 4 place? 5 A. The customers that we deal with would 6 generally have an accounting system. 7 Q. Do more than half of the ePlus prospects 8 have an electronic requisitioning system already in 9 place? 10 A. That varies by -- that goes in cycles. 11 I could tell you today as I stand here, I 12 was out at a number of companies over the last 2 13 weeks, number of prospects that do not have, and 14 we're talking about some very large customers. 15 So based on today, I could say, well, 16 my -- my high-level prospects don't have a system 17 right now. There's others that we have talked to, 18 you know, in recent months that are reevaluating what 19 they have. 20 Q. Other prospects do have some sort of a 21 requisition system in place electronic but they're 22 looking at other options anyway? 23 A. Sure. 24 Q. How long does a typical contract run with 25 a customer using a procure plus type of product?</p>	<p>390</p> <p>1 Q. So it's a very small number, or it's none 2 at all? 3 A. I think it's a mix. I think it's probably 4 a 50-50 mix. 5 Q. Okay. And 50-50 meaning ones that had 6 systems that were up for renewal versus ones that 7 didn't have systems at all? 8 A. Ones that I don't want to say was just up 9 for renewal. Ones that had some form of a 10 requisitioning system with some functionality, and 11 some that have considered to have nothing in place or 12 some home-grown, you know, half-baked system. 13 Q. I think it was either earlier today or 14 maybe yesterday that you mentioned sometime I believe 15 in 2009 you went to the SciQuest Website. 16 A. I think we did have a discussion of that, 17 yeah. 18 Q. Why did you go to the SciQuest Website in 19 2009? 20 A. I don't know when it was in reference to 21 when we spoke about, but there -- in the particulars 22 of the reason that I may have gone to it at that 23 point in time. 24 Q. As you sit here right now, do you recall 25 why you went to the Website?</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 A. Obviously to look at something, to find 2 something out about them.</p> <p>3 Q. I think you might have mentioned that it 4 had to do about checking on their use of the patent 5 numbers?</p> <p>6 A. Oh, you're right. Absolutely. That's 7 correct.</p> <p>8 Q. Did you ever visit the SciQuest Website 9 before you entered a license agreement with SciQuest?</p> <p>10 A. Yes.</p> <p>11 Q. Why did you do it then?</p> <p>12 A. Well, I wanted to go on the Website to get 13 an idea of the products and services that they were 14 offering.</p> <p>15 Q. What did you learn from that visit about 16 that?</p> <p>17 A. My recollection is that they did 18 procurement. They did content and catalog 19 management.</p> <p>20 They had a large presence in health care. 21 They maintained a catalog for the health care 22 industry, research and science revolving around 23 health care.</p> <p>24 And they had a few other things, you know, 25 contract management and so on that I recall.</p>	<p>393</p> <p>1 then speak to -- to counsel. I just don't want to be 2 frivolous about it.</p> <p>3 Q. All right. Did you visit the Lawson 4 Website before you sued Lawson?</p> <p>5 A. I said yes.</p> <p>6 Q. Okay. Did you visit the Lawson Website in 7 2008?</p> <p>8 A. I may have.</p> <p>9 Q. Have you visited the Lawson Website for 10 any reason other than understanding their product 11 line for purposes related to patent enforcement?</p> <p>12 A. It may have been for competitive reasons, 13 you know, and it may not -- I don't know -- I visit 14 hundreds if not thousands of different Websites for 15 information. And one thing leads you to something 16 else, and then you bounce into somebody else's 17 Website, so, you know, I couldn't tell you specifics.</p> <p>18 Q. What information did you learn about the 19 functionality of Lawson's product line from going to 20 their Website?</p> <p>21 A. You know, it's -- it's difficult to 22 ascertain from Websites, you know, what people say 23 and do. But I looked for some basic information 24 before I spoke to counsel.</p> <p>25 Do they have a procurement system. Do</p>
<p>1 Q. Did -- was this particular visit to the 2 SciQuest Website in 2009 or sooner?</p> <p>3 A. I -- you know, my latest recollection of 4 doing it is -- is when, you know, we were making a 5 determination -- or I was making the determination of 6 how we should potentially proceed with -- with 7 SciQuest.</p> <p>8 Q. From a patent standpoint?</p> <p>9 A. Yes.</p> <p>10 Q. Have you visited the Lawson Website?</p> <p>11 A. I have.</p> <p>12 Q. Did you do that before the lawsuit was 13 brought or after?</p> <p>14 A. No.</p> <p>15 Look, I'm not in a position to want to be 16 frivolous about filing a lawsuit. It's expensive. 17 So before I engage my counsel, not that I can 18 interpret the patents to the extent that my counsel 19 can and do the evaluation, I want to be convinced at 20 a high level that even though I may have a belief of 21 what it -- you know, from -- from competitive 22 situations of what Lawson may be doing.</p> <p>23 I want to go on their Website as I did 24 with SciQuest and just kind of landscape-out, you 25 know, what are they doing, and, you know, then --</p>	<p>394</p> <p>1 they claim to do requisitions. Do they claim to be 2 able to search catalogs. Do they claim to 3 potentially check inventory. Do they provide content 4 services to build catalogs.</p> <p>5 I look for those basic things. And I 6 don't try to interpret everything back to our patents 7 and claims because I'm not a lawyer and I don't, you 8 know, know all the legal aspects of interpretation. 9 But if I believe that those basic areas that there's 10 some -- some things to look at, then I'll make a 11 determination and contact our counsel and ask them to 12 look at this for us.</p> <p>13 Q. Did you make a determination from your 14 visit to the Lawson Website as to whether or not 15 Lawson's purchasing and requisition systems would 16 allow a user to do comparison shopping?</p> <p>17 A. I don't know how I broke down my -- my -- 18 my view of things. I -- it looked to me when I went 19 onto the -- to the Website to the best of my 20 recollection, there was enough information available 21 to me at that time to initiate further investigation.</p> <p>22 Q. Okay. But my question is a little 23 different.</p> <p>24 Okay?</p> <p>25 A. Okay.</p> <p>395</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

397	399
<p>1 MR. McDONALD: Could you read it back, 2 please.</p> <p>3 (The reporter read the next-to-last 4 question.)</p> <p>5 A. I think I found and I can't cite where and 6 what it was and what I read, but I think I found 7 enough information to make me believe that in fact 8 there was a capability to do that.</p> <p>9 BY MR. McDONALD:</p> <p>10 Q. And from visiting the Lawson Website, did 11 you reach any conclusions as to whether or not the 12 Lawson purchasing and requisition system could search 13 a selected subset of catalogs from a catalog 14 database?</p> <p>15 MR. ROBERTSON: Object to the form of the 16 question.</p> <p>17 But you can answer.</p> <p>18 A. That's what I leave up for further 19 investigation. I can't get to -- to levels of 20 granularity. And rather than surmising and rather 21 than wasting a lot of dollars and frivolously 22 launching a lawsuit, that's why we have, you know, 23 our counsel investigate that for us.</p> <p>24 BY MR. McDONALD:</p> <p>25 Q. So apart from counsel, is it fair to say</p>	<p>1 system, would you -- would that raise any patent 2 infringement concerns for you?</p> <p>3 MR. ROBERTSON: Objection, calls for a 4 legal conclusion.</p> <p>5 A. I don't know. I'd have to have our 6 counsel look at the settlement agreement to determine 7 if there was a not honoring of the agreement.</p> <p>8 BY MR. McDONALD:</p> <p>9 Q. Are you aware of any situations where 10 Ariba was awarded the business for catalog management 11 on a prospect's system that already was using a 12 Lawson requisition system?</p> <p>13 A. Not that I'm aware of.</p> <p>14 Q. If you became aware of that sort of 15 situation, would that in itself, just the fact that 16 Ariba's system was the one used -- would that cause 17 you to talk to counsel or not?</p> <p>18 A. I may have them look at it.</p> <p>19 I'm not familiar with Ariba offering their 20 catalogs to other systems, but it's something we -- 21 you know, that may cause concern on my part, and 22 more likely than not, I would probably have it looked 23 at.</p> <p>24 Q. I think you indicated you had at least 25 from a layperson understanding an understanding of</p>
398	400

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 Q. Yesterday, we talked a little bit about 2 the notice to Lawson. 3 A. Yes. 4 Q. And you talked about some press coverage 5 of the other litigation. 6 Right? 7 A. The Ariba litigation? 8 Q. I believe you mentioned the press coverage 9 of other litigation, whether it was Ariba or SAP, 10 but -- 11 A. Okay. 12 Q. Is that right? 13 Were you referring to press coverage of 14 both litigations or just the Ariba litigation? 15 A. I think in the context of yesterday when 16 we were talking about the time periods, you were 17 asking me more in the Ariba time period than you were 18 asking -- 19 Q. So the press coverage -- do you believe 20 the Ariba case had significant press coverage? 21 A. I do. 22 Q. Do you believe the SAP settlement had 23 significant press coverage or not? 24 A. I do. 25 Q. What's the basis for that belief?</p>	<p>401</p> <p>1 as an example where the jury found that the -- that 2 Ariba willfully infringed and that the patents were 3 valid, there was a lot of publicity because there was 4 this whole thing, and I don't understand all the 5 legal aspects, but, you know, that ePlus could 6 potentially be awarded treble damages. 7 So people were expecting, you know, a lot 8 of money and a lot of problems and, you know, from 9 Ariba's perspective and so on and so forth. So 10 there's a lot of discussion about that. 11 And then the settlement occurred. And 12 again, a republication of Ariba and ePlus by example 13 settled, and then the trade magazines picked up that. 14 The analysts picked that up. The blogs picked that 15 up. 16 So there was coverage at different levels 17 of the litigation because it became -- it became 18 publicized. Ariba was the first one of its type in 19 this space, received a lot. 20 Q. Do you have any basis to believe that any 21 particular article or press coverage was seen by any 22 individuals at Lawson? 23 A. That would be speculation on my part and 24 what I think I believe -- I think yesterday I said 25 that anybody that I thought in my opinion didn't see</p>	<p>403</p>
<p>1 A. Same -- same belief as I had with -- with 2 Ariba. I think it was -- it was covered in trade 3 magazines and industry blogs, statements by both 4 companies, public statements by both companies 5 pertaining to -- to the -- to the lawsuit. 6 So, you know, it received I think 7 enough -- enough publicity to warrant somebody in the 8 space to -- to know what was going on. 9 Q. What did the media coverage say about the 10 SAP litigation, media coverage that you're talking 11 about? 12 A. Well, usually starts off with ePlus sues 13 Ariba or ePlus sues SAP. Then it usually revolves 14 into Ariba denies the charges or SAP denies the 15 charges. And both parties will, you know, vigorously 16 defend their rights and so on and so forth. 17 And, you know, then there's some 18 republication of -- of that information, you know, 19 that there's a suit pending. And then there's the -- 20 some reproduction by some of the trade magazines 21 about the claims associated with -- with what we're 22 litigating about. 23 The analysts, some of them have picked up, 24 you know, blurbs and talked about that there's suits 25 pending. And then, you know, in the case -- in Ariba</p>	<p>402</p> <p>1 it was probably living in a cave or under a rock. 2 MR. McDONALD: Would you mark this as an 3 exhibit, please. 4 (Lawson Exhibit No. 38 5 was marked for 6 identification.) 7 BY MR. McDONALD: 8 Q. Mr. Farber, is exhibit 38 an email to 9 persons including you dated March 17, 2009, with an 10 attachment? 11 A. Yes, it is. 12 Q. Is the attachment the response to the 13 Novant RFP? 14 A. It appears to be -- let me just see 15 here -- it's not the final response, no. 16 Q. Okay. It's a draft. 17 Right? 18 A. It is I think -- it looks like the initial 19 RFP questions being put in here. 20 Q. All right. 21 A. And maybe some -- actually I don't see any 22 responses yet. 23 Q. So -- and I think we saw that that date of 24 the other document that we looked at that was a 25 response was actually March 20, 2009.</p>	<p>404</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 Correct?</p> <p>2 A. An earlier document?</p> <p>3 Q. The RFP that had the questions answered.</p> <p>4 A. Yeah, that's what this one actually says.</p> <p>5 It has the same dates on it.</p> <p>6 Q. Oh, that's right. This attachment says,</p> <p>7 March 20th on it as well.</p> <p>8 A. That's right. That's right.</p> <p>9 Q. So it's a draft that's going to be due in</p> <p>10 a few more days.</p> <p>11 Right?</p> <p>12 A. I would suspect.</p> <p>13 Q. Okay. So does this refresh your</p> <p>14 recollection as to whether you had some involvement</p> <p>15 in actually reviewing the draft RFP?</p> <p>16 A. I could have been copied on it. I try to</p> <p>17 look at all the responses. I try to give my</p> <p>18 approvals of them.</p> <p>19 There's times when I'm unavailable or</p> <p>20 outside the office and somebody else may do it. So I</p> <p>21 don't know. I'd have to see if there was a copy of</p> <p>22 my approved email on it.</p> <p>23 Q. Did ePlus integrate its e-procurement</p> <p>24 system with a Lawson system at Gannett?</p> <p>25 A. Yes.</p>	<p>405</p> <p>1 managers or if it was used for a higher-level</p> <p>2 management meeting.</p> <p>3 Q. Whatever the purpose of the presentation?</p> <p>4 A. If I could spend a minute, let me just --</p> <p>5 Q. Oh, sure.</p> <p>6 A. -- go through that.</p> <p>7 Q. Sure.</p> <p>8 A. It looks like it had a number of different</p> <p>9 purposes.</p> <p>10 One was to kind of review the state of</p> <p>11 affairs within the company, within the organization,</p> <p>12 and the other is potentially talking about alignment</p> <p>13 of staff and resources.</p> <p>14 Q. Was there any concerns at ePlus about the</p> <p>15 downward trend in revenues from fiscal year ending</p> <p>16 March 31, 2008, to the fiscal year that was going to</p> <p>17 end in March of 2009 at the time this presentation</p> <p>18 was made?</p> <p>19 A. ePlus as a company?</p> <p>20 Q. Yes.</p> <p>21 A. Let me just make sure I understand.</p> <p>22 You're asking me if ePlus as a company had</p> <p>23 any concern about a downward trend.</p> <p>24 Q. Right?</p> <p>25 A. Okay. I think ePlus as a company quarter</p>	<p>407</p>
<p>1 Q. What -- did the Lawson system at Gannett</p> <p>2 have requisitioning capabilities?</p> <p>3 A. To be clear, when we did our</p> <p>4 implementation with Gannett, we did it in -- the</p> <p>5 group that was managing it was in Virginia. And we</p> <p>6 integrated with Lawson's accounting system or what</p> <p>7 I -- I don't know the name of the product, but it's</p> <p>8 the accounting system that has the general ledger,</p> <p>9 accounts payable.</p> <p>10 MR. McDONALD: Mark this, please.</p> <p>11 (Lawson Exhibit No. 39</p> <p>12 was marked for</p> <p>13 identification.)</p> <p>14 BY MR. McDONALD:</p> <p>15 Q. Mr. Farber, you've been shown what was</p> <p>16 marked exhibit 39.</p> <p>17 Do you recognize this document?</p> <p>18 A. I believe I do.</p> <p>19 Q. What is it?</p> <p>20 A. I believe it's a document that I prepared</p> <p>21 in this time frame for an internal meeting.</p> <p>22 Q. It's an ePlus internal meeting?</p> <p>23 A. Yes.</p> <p>24 Q. Was that with the top executives at ePlus?</p> <p>25 A. I don't know if it was my internal</p>	<p>406</p> <p>408</p> <p>1 by quarter is very concerned about trends, whether</p> <p>2 they go up or they go down. We're very cognizant of</p> <p>3 that aspect of the market.</p> <p>4 So there were some -- some positive things</p> <p>5 that -- that occurred in a downward trend, and that</p> <p>6 is in our hardware side -- our margins actually went</p> <p>7 up, so even though that we -- our revenue went down,</p> <p>8 our -- our earnings based on the margins and net</p> <p>9 income had increased a little bit from what I recall.</p> <p>10 So it was good on the margin side of the</p> <p>11 value-added reseller aspect of our business, but we</p> <p>12 were working on new strategies and new ways to</p> <p>13 increase the top-line spend with the company.</p> <p>14 Q. Top-line spend, is that revenues?</p> <p>15 A. Revenue, yes.</p> <p>16 Q. Can you turn to the third page of exhibit</p> <p>17 39, please.</p> <p>18 A. 39. That's this one.</p> <p>19 Okay. Yes.</p> <p>20 Q. Can you tell me what is depicted here on</p> <p>21 the third page?</p> <p>22 A. This looks like a depiction of what our</p> <p>23 sales account managers were reporting as of the state</p> <p>24 of this month in terms of where certain deals were</p> <p>25 being projected.</p>	

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

409	411
<p>1 Q. So with the 3 bullet points under renewals 2 there for Digitas, Cisco, and Purdue -- 3 A. Yes. 4 Q. -- did ePlus wind up getting all 3 of 5 those renewals? 6 A. Yes. 7 Q. With respect to the, new deals looking 8 pretty good, on that page, do you see there's about 9 10 company names there? 10 A. Yes. 11 Q. Which one or ones of those did ePlus wind 12 up getting? 13 A. Koch Industries, which was the first one. 14 Dow Chemical I believe uses our content tool. I 15 don't know if this was an add-on to it or not, so I 16 can't -- but I think we did get that. 17 United Nations, the Coke PCR, Sikorsky, 18 and I believe Dessault. 19 Q. Do you know who got U Mass? 20 A. No, I don't. 21 Q. Do you know who got KLM? 22 A. No. 23 Q. Do you know who got Wolters Kluwers (sic)? 24 A. Not off the top of my head, no. 25 Q. With respect to the Dow Chemical deal,</p>	<p>1 A. Yes, that's correct. 2 Q. Of any of these, did ePlus lose any of 3 those customers to Lawson? 4 A. I don't know. I would have to -- to find 5 out. I don't know. Some of them are still active. 6 Some aren't. 7 Q. Which ones has ePlus won? 8 A. Let's see, UN spend management, which 9 seems to be a repeat from the prior page by the way. 10 And I think that's it right now of this 11 subsetted list. 12 Q. Which ones of this list did somebody else 13 win? 14 A. I don't know. I have to go back on each 15 one. I don't know that off the top of my head. 16 Q. Do you know which ones are still up in the 17 air? 18 A. Let's see, I would think Cushman & 19 Wakefield, Fannie Mae. Verizon I know is still open. 20 Family Dollar portal is still open. I know Cisco 21 country of origin is still open. 22 I don't know where the others stand. They 23 may be open, they may not be. 24 Q. Okay. Just a few more questions, then, 25 Mr. Farber.</p>
410	412
<p>1 that one has listed there, content. 2 Correct? 3 A. Yes. 4 Q. Did you did sell Dow the content plus 5 product? 6 A. Dow uses one of our contents tools, and I 7 believe best of my recollection that that was 8 actually a services engagement where they asked us to 9 come in and do some -- some service work for them. 10 Q. Did they have somebody else's requisition 11 or e-procurement system? 12 A. I don't know. We're not working with the 13 procurement group at Dow. 14 Q. On this chart, does P plus refer to 15 procure plus? 16 A. I believe so, yes, yes. 17 Q. What does C plus refer to? 18 A. Catalog or content -- the content family 19 of solutions, whatever they may be. 20 Q. What does DP stand for? 21 A. Digital paper. 22 Q. Turn to the next page, please. 23 A. Yes. 24 Q. Are these potential deals that were in the 25 pipeline; is that right?</p>	<p>1 A. Sure. 2 Q. When do you think Lawson first became 3 aware of the ePlus patents? 4 A. When do I think they may have become 5 aware? 6 Q. Yes. 7 A. You know, I would say as late as the Ariba 8 case. Maybe they knew about it earlier. I don't 9 know. 10 But I would believe in my opinion 11 certainly around the time frame of the Ariba case -- 12 litigation, I should say. 13 Q. And is the basis for that the press 14 coverage that you referred to earlier? 15 A. Yeah, everything we discussed earlier in 16 that -- in that regard. 17 Q. Do you have a date by which you believe 18 Lawson first believed that any products that it sold 19 infringed ePlus's patents? 20 A. I don't -- I don't have any insight into 21 what goes on inside of Lawson where a communication 22 or whatever may have been done in that regard. 23 Q. It is true though that ePlus never 24 communicated directly with Lawson about its patents 25 before it sued it.</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 Right?</p> <p>2 A. No, of course not.</p> <p>3 Q. You say, no, of course not, you're</p> <p>4 agreeing that ePlus never communicated with Lawson</p> <p>5 before the lawsuit?</p> <p>6 A. Regarding the patents?</p> <p>7 Q. Right.</p> <p>8 A. Correct.</p> <p>9 Q. Has ePlus had any communications with IBM</p> <p>10 about the patents involved in this lawsuit?</p> <p>11 A. Not to my knowledge.</p> <p>12 Q. Has ePlus had any communications with</p> <p>13 anyone regarding the IBM technical viewer or TV 2</p> <p>14 product?</p> <p>15 A. Have we had any conversations about it?</p> <p>16 Q. Any written communications or --</p> <p>17 A. I don't know about written communication,</p> <p>18 certainly not -- not at ePlus or since I've been</p> <p>19 involved.</p> <p>20 The only thing I heard of TV 2 the first</p> <p>21 time was at trial.</p> <p>22 Q. Do you know whether or not IBM has an</p> <p>23 e-procurement product?</p> <p>24 A. Who?</p> <p>25 Q. IBM.</p>	<p>413</p> <p>1 was it.</p> <p>2 Q. Do any of ePlus's licensees under the</p> <p>3 patents-in-suit pay any royalties that are based on a</p> <p>4 percentage of the revenues?</p> <p>5 A. There is one that -- that there's a -- a</p> <p>6 revenue carveout for, yes.</p> <p>7 Q. Is it a carveout in the sense that a</p> <p>8 royalty is paid based on a percentage of revenue?</p> <p>9 A. Based on attai- -- a -- there's a</p> <p>10 percentage that needs to get paid to ePlus based on</p> <p>11 their attainment of a certain level of revenue for</p> <p>12 the products.</p> <p>13 Q. Can you explain a little more specifically</p> <p>14 how that works?</p> <p>15 What happens when the licensee gets to</p> <p>16 that certain level of sales?</p> <p>17 A. So -- and I'd have to reference the</p> <p>18 agreement for the exact percentage in dollar amounts,</p> <p>19 but in -- to illustrate it for you, a certain amount</p> <p>20 was paid to ePlus as a cash payment, and the next --</p> <p>21 there's a couple of cash payments.</p> <p>22 And then if the company hits a certain</p> <p>23 revenue size as a company, then there's a percentage</p> <p>24 of that revenue that would be given to ePlus as a</p> <p>25 royalty.</p>	<p>415</p>
<p>1 A. They may have some elements of a</p> <p>2 procurement system. I know they also resell and</p> <p>3 represent other -- other companies' procurement</p> <p>4 systems.</p> <p>5 Q. Do you have any reason to believe that IBM</p> <p>6 sells any e-procurement systems that infringe any of</p> <p>7 the patents in this suit?</p> <p>8 MR. ROBERTSON: Objection, calls for a</p> <p>9 legal conclusion.</p> <p>10 A. I don't have knowledge of IBM having their</p> <p>11 own procurement system.</p> <p>12 I have knowledge of IBM selling other</p> <p>13 companies' procurement system, you know, one of those</p> <p>14 being SAP, who has a license.</p> <p>15 BY MR. McDONALD:</p> <p>16 Q. Does IBM sell any e-procurement systems</p> <p>17 other than SAP's?</p> <p>18 A. I'm not aware.</p> <p>19 Q. Does ePlus have any knowledge of the</p> <p>20 Fisher Scientific RIMS system that was the subject of</p> <p>21 a patent filed back in the early '90s?</p> <p>22 A. You know, only from what -- I wouldn't</p> <p>23 even say at a high level -- on what -- what -- the</p> <p>24 only knowledge that I have of that system is it being</p> <p>25 some form of inventory management system, but that</p>	<p>414</p> <p>1 Q. Which company has that licensed deal?</p> <p>2 A. I believe it was Verian Technologies.</p> <p>3 Q. That was a license entered here in 2009?</p> <p>4 A. Yes, it was since the initial complaint,</p> <p>5 correct.</p> <p>6 Q. With respect to SAP, do you have an</p> <p>7 understanding as to how many dollars' worth of SAP</p> <p>8 revenue were at issue in the infringement case on an</p> <p>9 annual basis approximately?</p> <p>10 A. I wasn't exposed to that, the financial</p> <p>11 data of SAP, so I don't know.</p> <p>12 Q. Were you involved in the settlement</p> <p>13 negotiations with SAP?</p> <p>14 A. I was involved, yes.</p> <p>15 Q. In the course of those negotiations, did</p> <p>16 you learn the amount of SAP revenues that were at</p> <p>17 issue in the infringement case?</p> <p>18 A. No.</p> <p>19 Q. How did you come up with a settlement</p> <p>20 number in the SAP case without access to the revenue</p> <p>21 figures?</p> <p>22 A. Fair question.</p> <p>23 I used my counsel to determine if they</p> <p>24 thought it was fair based on the information that was</p> <p>25 considered confidential or attorney-client -- you</p>	<p>416</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

417	419
<p>1 know, attorney-privileged that I couldn't see. I 2 could only look to them and say, is this a good deal, 3 a bad deal.</p> <p>4 Q. So none of the business people at ePlus 5 got information about the revenues at issue in the 6 SAP matter?</p> <p>7 A. Not to my knowledge.</p> <p>8 I believe -- I believe and recall that 9 they may have been confidential. I know if I 10 received them, I probably would have remembered them. 11 But I don't believe they were ever disclosed to us.</p> <p>12 Q. How much Ariba revenue was at issue in the 13 infringement case?</p> <p>14 A. We never got to the -- to the damages 15 portion of the trial, which I suspect a lot of that 16 would have potentially come out of that portion of 17 the trial, and I don't recall ever having been given 18 the revenue numbers.</p> <p>19 Q. When you reached a settlement with Ariba, 20 did the determination of the amount of the settlement 21 from your standpoint have anything to do with the 22 Ariba's revenues that were at issue?</p> <p>23 A. No.</p> <p>24 You know, I didn't have access to the 25 information, so there were a number of considerations</p>	<p>1 with the database architecture design function, et 2 cetera. You've got other categories we're going to 3 have to hit with somebody else sooner or later 4 anyway, so I'm just asking that we keep that one open 5 for the next -- or the completion of the 30(b)(6).</p> <p>6 Other than that, Mr. Farber, I have no 7 further questions.</p> <p>8 Thank you.</p> <p>9 THE WITNESS: Thank you.</p> <p>10 MR. ROBERTSON: Just briefly, Mr. Farber.</p> <p>11</p> <p>12 EXAMINATION BY COUNSEL FOR PLAINTIFF</p> <p>13 BY MR. ROBERTSON:</p> <p>14 Q. Could you look at exhibit number 20, which 15 was the ePlus briefing dated September 20 -- excuse 16 me -- September 2008.</p> <p>17 A. 20?</p> <p>18 Q. Exhibit number 20.</p> <p>19 MR. McDONALD: Okay. Hold on.</p> <p>20 BY MR. ROBERTSON:</p> <p>21 Q. It's the ePlus briefing.</p> <p>22 A. I know. I kept these in order, so I'm 23 sure -- yes, I have it.</p> <p>24 Q. And specifically, you were asked questions 25 concerning enabling solutions that appear on a page</p>
418	420

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

421	423
<p>1 days, procure plus.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Now, procure plus existed at the</p> <p>5 time of the creation of this document, September</p> <p>6 2008; is that right?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. You see at the bottom, it says,</p> <p>9 provided since 1983.</p> <p>10 A. Yes.</p> <p>11 Q. Procure plus, there was a number company</p> <p>12 logos, and then there's a bullet point.</p> <p>13 First one says, provided since 1983.</p> <p>14 Do you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Did ePlus exist in 1983?</p> <p>17 Do you know?</p> <p>18 A. No, it didn't.</p> <p>19 Q. Did procure net exist in 1983?</p> <p>20 A. No.</p> <p>21 Q. Did a product known as procure plus exist</p> <p>22 in 1983?</p> <p>23 A. No, no.</p> <p>24 Q. Okay. Now, I want to understand, then,</p> <p>25 what is meant by this bullet point that says,</p>	<p>1 procurement systems dating back to 1983.</p> <p>2 Q. How about -- there's -- you were asked</p> <p>3 some questions about the content management column in</p> <p>4 exhibit number 20.</p> <p>5 Do you recall that?</p> <p>6 A. Yes.</p> <p>7 Q. Again similarly, their -- your trademarked</p> <p>8 product, the content plus that you've been asked some</p> <p>9 questions about concerning catalog management, is</p> <p>10 referenced there.</p> <p>11 Correct?</p> <p>12 A. Yes, that's correct.</p> <p>13 Q. And again underneath that were a number of</p> <p>14 company logos; is that right?</p> <p>15 A. That's correct.</p> <p>16 Q. I just want to understand.</p> <p>17 Does that indicate that at some point in</p> <p>18 time, those companies employed this software</p> <p>19 solution?</p> <p>20 A. No.</p> <p>21 I mean, if you're dating back to 1990?</p> <p>22 Q. No.</p> <p>23 I'm asking you about in the 2008 period.</p> <p>24 A. Oh, in 2008?</p> <p>25 Q. Yes.</p>
422	424
<p>1 provided since 1983, because you were asked that</p> <p>2 question in response to the -- by Mr. McDonald.</p> <p>3 A. Okay.</p> <p>4 Q. Can you explain that for me?</p> <p>5 A. Yeah.</p> <p>6 The -- you know, the title is called,</p> <p>7 enabling solutions, so when we talk about</p> <p>8 procurement, you know, we're listing clients that are</p> <p>9 procure plus, we've provided -- when I say, we, one</p> <p>10 of the things that I said earlier -- I think it may</p> <p>11 have been yesterday -- in terms of what</p> <p>12 differentiates us from others in the industry, one of</p> <p>13 those things that I discussed was people.</p> <p>14 And our people have -- have been in the</p> <p>15 industry providing their expertise in the procurement</p> <p>16 arena for 20 some-odd years dating back to '83.</p> <p>17 Q. How long have you been involved in the</p> <p>18 procurement area?</p> <p>19 A. Personally, I've been involved in the</p> <p>20 procurement area 10 years.</p> <p>21 Q. Okay. Do you know whether or not there</p> <p>22 were electronic procurement systems available in</p> <p>23 1983?</p> <p>24 A. Well, I've been involved in the computer</p> <p>25 industry for 30 years, and I'm not aware of</p>	<p>1 A. Well, it's a combination in the content</p> <p>2 space too.</p> <p>3 I mean, they either have used our solution</p> <p>4 as of that date as the application or utilized the</p> <p>5 services and knowledge of our people.</p> <p>6 Q. Specifically, I'm asking about, do you</p> <p>7 know whether or not the logos appear there because</p> <p>8 they are customers or clients of ePlus?</p> <p>9 For example, is Hitachi a customer of</p> <p>10 ePlus?</p> <p>11 A. Sure.</p> <p>12 Q. Okay. Is Devon Industries?</p> <p>13 A. Yes, yes, yeah, they're customers.</p> <p>14 Q. Do they use the procure plus solution?</p> <p>15 A. Yes, they did at this time, sure.</p> <p>16 Q. All right. We're talking at this time in</p> <p>17 2008?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Now, underneath there, the first</p> <p>20 bullet point in the column on content management</p> <p>21 says, provided since 1990.</p> <p>22 A. Yes.</p> <p>23 Q. Did ePlus have a product known as content</p> <p>24 plus in 1990?</p> <p>25 A. No, no.</p>

Farber, Kenneth, Gary - 30(b)(6) & Individual - Vol 2 12/17/2009 12:00:00 PM

<p>1 Q. Okay. So what are you indicating there on 2 this bullet point again under content management 3 where you list content plus as a product? 4 What are you attempting to illustrate? 5 A. Sure. 6 So content management expertise was 7 provided to customers, you know, dating back to 1990, 8 and I guess we're coming on almost 20 years now, but 9 what the group of knowledgeable people used to do is 10 manually clean data for people, you know, the 11 old-fashioned way. 12 Q. But do you know whether or not the 13 functionality that is present in content plus, the 14 product that's being offered in this -- referenced in 15 this document of September 2008 was offered in 1990? 16 A. No, it wasn't. 17 Q. Okay. Do you know approximately when the 18 first iteration of content plus came out? 19 A. It was more in the -- I believe in the -- 20 in the latter part of the procure net days and into 21 the ePlus days. 22 Q. Maybe you answered this question. 23 But the last bullet point under the 24 column, content management, says, patented 25 technology.</p>	<p>425</p> <p>1 (Whereupon, at 2:42 p.m., the taking of 2 the instant deposition ceased.) 3 4 5 _____ 6 Signature of the Witness 7 SUBSCRIBED AND SWORDN to before me this _____ day of 8 _____, 20 _____. 9 10 _____ 11 Notary Public 12 My Commission Expires: _____ 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>426</p> <p>1 A. Yes. 2 Q. Is that referencing or not referencing the 3 actual patents that are involved in the complaint 4 here against Lawson? 5 A. The -- in the context of those solutions, 6 they would not be the patents. 7 Q. Do you know how many patents you have with 8 respect to content management? 9 A. I think there might be 2 or 3 patents in 10 that -- in that area. 11 Q. Okay. But they're not the subject of this 12 lawsuit? 13 A. No, they're not, not at all. 14 MR. ROBERTSON: That's all the questions I 15 have. 16 MR. McDONALD: I have no questions. 17 Thank you, Mr. Farber. 18 THE WITNESS: Thank you. 19 THE VIDEOGRAPHER: The time is 20 approximately 2:42 PM. This is the conclusion of the 21 video deposition of ePlus Inc. pursuant to rule 22 30(b)(6) by their designee, Kenneth G. Farber, and 23 Kenneth G. Farber personally, taken on Thursday, 24 December 17th, 2009. 25 Off the record.</p>
	<p>427</p> <p>1 CERTIFICATE OF COURT REPORTER 2 UNITED STATES OF AMERICA) 3 DISTRICT OF COLUMBIA) 4 I, CHERYL A. LORD, the reporter before 5 whom the foregoing deposition was taken, do hereby 6 certify that the witness whose testimony appears in 7 the foregoing deposition was sworn by me; that the 8 testimony of said witness was taken by me in machine 9 shorthand and thereafter transcribed by 10 computer-aided transcription; that said deposition is 11 a true record of the testimony given by said witness; 12 that I am neither counsel for, related to, nor 13 employed by any of the parties to the action in which 14 this deposition was taken; and, further, that I am 15 not a relative or employee of any attorney or counsel 16 employed by the parties hereto, or financially or 17 otherwise interested in the outcome of this action. 18 _____ 19 CHERYL A. LORD 20 Notary Public in and for 21 the District of Columbia 22 My Commission expires April 30, 2011 23 24 25</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

1 UNITED STATES DISTRICT COURT 2 EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 ePLUS, INC.,) 5 Plaintiff,) 6 v.) No. 3:09cv620 7 LAWSON SOFTWARE, INC.,) 8 Defendant.) 9 10 Washington, D.C. 11 Tuesday, May 18, 2010 12 30(b)(6) Videotape Deposition of ePLUS INC., by and 13 through its designee, KENNETH GARY FARBER, called for 14 examination by counsel for Defendant in the 15 above-entitled matter, the witness being duly sworn 16 by CHERYL A. LORD, a Notary Public in and for the 17 District of Columbia, taken at the offices of 18 TROUTMAN SANDERS LLP, 401 9th Street, Suite 1000, 19 Washington, D.C., at 9:56 a.m., and the proceedings 20 being taken down by Stenotype by CHERYL A. LORD, RPR, 21 CRR. 22 23 24 25	1 C O N T E N T S 2 WITNESS 3 KENNETH GARY FARBER PAGE NO. 4 EXAMINATION 5 By Mr. McDonald 6 6 7 8 E X H I B I T S 9 (Exhibits attached.) 10 LAWSON EXHIBIT NO. PAGE NO. 11 56 Defendant Lawson Software, Inc.'s 12 Amended Notice of Deposition of 13 ePlus, Inc. Pursuant to Rule 14 30(b)(6) of the Federal Rules of 15 Civil Procedure 5 16 57 Software License Agreement, 17 April 14, 1999, ePLUS0700136-55 9 18 58 Valuation Methodologies and 19 Valuations, ePLUS0135341-44 12 20 59 Intellectual Property License 21 Agreement, ePLUS0949000-17 50 22 60 Opening Journal Entries, 23 ePLUS0135345 66 24 61 Deferred Maintenance, 25 ePLUS0135349-51 68
1 APPEARANCES: 2 3 On behalf of Plaintiff: 4 MICHAEL STRAPP, ESQUIRE 5 GOODWIN PROCTER LLP 6 Exchange Place 7 53 State Street 8 Boston, MA 02109 9 (617) 570-1658 10 11 On behalf of Defendant: 12 DANIEL W. McDONALD, ESQ. 13 MERCHANT & GOULD P.C. 14 80 S. 8th Street, Suite 3200 15 Minneapolis, MN 55402-2215 16 (612) 332-5300 17 18 ALSO PRESENT: 19 Merinda Ellis Evans, videographer 20 21 22 23 24 25	2 E X H I B I T S C O N T I N U E D 3 62 Exhibit 6, Valuation of Assembled 4 Work Force, ePLUS0135347-46 69 5 63 SEC Form S-1, ePLUS0448712-851 76 6 64 2001 Annual Report 86 7 65 2002 Annual Report, ePLUS0133288-373 96 8 66 Letter, 11-10-00 105 9 67 Screenprint, Content + Advanced 119 10 68 Screenprint, Catalog + 130 11 69 Screenprint, Differentiators 143 12 70 Patent License and Settlement 13 Agreement, ePLUS094077-801 160 14 71 Form 10-K, ePLUS0139447-555 162 15 16 17 18 19 20 21 22 23 24 25

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 PROCEEDINGS 2 (Lawson Exhibit No. 56 3 was marked for 4 identification.) 5 THE VIDEOGRAPHER: Good morning. 6 Here begins videotape number 1 in the 7 deposition Kenneth Farber in the matter of ePlus Inc. 8 versus Lawson Software for the court -- for the court 9 of -- United States court for the Eastern District of 10 Virginia, case number 3, colon, 09 CV 620 REP. 11 Today's date is May 18th, and the time is 12 now 9:56 AM. This deposition is being held at the 13 request of Daniel W. McDonald, Esquire, of Merchant & 14 Gould and being taken at Troutman Sanders LLP, 401 15 9th Street N.W., Washington, D.C., 2004 (sic). 16 The videographer today is Merinda Evans, 17 the court reporter is Cheryl Lord, representing Pro 18 Systems Court Reporting. 19 Will all the attorneys please identify 20 yourself and anyone you represent, and would the 21 court reporter please swear in the witness. 22 MR. McDONALD: Daniel McDonald for Lawson 23 Software. 24 MR. STRAPP: Michael Strapp for ePlus. 25 Whereupon,</p>	<p>5 1 MR. McDONALD: So we'll leave 19 off. I 2 didn't list 23, but 19 was on my list, and that 3 should be off, so we'll take that off today, 4 Mr. Farber. 5 THE WITNESS: M-hm. 6 BY MR. McDONALD: 7 Q. I'd like to start with the categories 21 8 and 24. You can review those on pages 9 and 10, but 9 generally, they would relate to valuations of the 10 patents-in-suit and facts and circumstances 11 surrounding offers or attempts to license the 12 patents-in-suit. 13 All right? 14 A. Yes. 15 Q. How is it that you got selected to be the 16 corporate representative as to those topics for 17 today's deposition? 18 MR. STRAPP: Objection to the extent it 19 requests communications between your counsel, so if 20 you can answer without referring to the 21 communications we've had, go ahead, but otherwise, I 22 instruct you not to answer. 23 A. Well, I think that it was just deemed that 24 I was knowledgeable to the extent that I would be 25 able to represent the company to respond to these</p>
<p>1 KENNETH GARY FARBER 2 was called as a witness by counsel for Defendant, 3 and, having been duly sworn by the Notary Public, was 4 examined and testified as follows: 5 EXAMINATION BY COUNSEL FOR DEFENDANT 6 BY MR. McDONALD: 7 Q. Mr. Farber, good morning. 8 A. Good morning. 9 Q. You have before you what was marked as 10 exhibit 56. This is a deposition notice for today's 11 deposition. 12 Have you reviewed the categories listed 13 there on page 1, namely, 19 to 21, 24 to 29, and 31 14 to 36 listed in the schedule A attached to it? 15 A. Yes, I believe so. 16 Q. Okay. Is it your understanding that you 17 are here today to testify as the corporate 18 representative for ePlus Inc. with respect to those 19 categories? 20 A. Yes. 21 MR. STRAPP: I'll put on the record, topic 22 19 is going to be a deposition that takes place this 23 Friday, and topic 23 is going to be a deposition that 24 takes place next week, so Mr. Farber isn't here to 25 testify about those 2 documents.</p>	<p>6 1 questions. 2 BY MR. McDONALD: 3 Q. Did you talk to anybody else at ePlus 4 relating to these categories to prepare yourself to 5 testify today? 6 A. No. 7 Q. Did you look at any documents to prepare 8 yourself to testify today? 9 A. There were a few. 10 Q. What documents did you look at? 11 A. Well, specific to certain categories here, 12 looked at some of the settlement agreements that we 13 had done in the past with other parties. 14 Q. Did you look at anything else with respect 15 to those 2 categories I mentioned? 16 A. We're talking specifically which 2 17 categories again? 18 Q. 21 and 24 regarding the valuation of the 19 patents and the circumstances surrounding attempts to 20 license the patents. 21 A. Well, the settlement agreements as I 22 previously discussed and the original license 23 agreement between ProcureNet and Fisher. 24 Q. Is that the software license agreement 25 from April of 1999 between ProcureNet and Fisher?</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 A. I'd have to look. I believe that's 2 probably the one. 3 Q. Okay. 4 MR. McDONALD: Let's go ahead and mark 5 this as the next exhibit, and we'll identify that. 6 (Lawson Exhibit No. 57 7 was marked for 8 identification.) 9 BY MR. McDONALD: 10 Q. Mr. Farber, exhibit 57 was just handed to 11 you. 12 Is that the ProcureNet-Fisher license 13 agreement that you just referred to that you had 14 reviewed? 15 A. Yes, I believe it is. 16 Q. And that is dated April of '99. 17 Correct? 18 A. That's correct. 19 Q. In this case, ePlus has a damages expert 20 named Mr. Mangum. 21 Right? 22 A. That's correct. 23 Q. Did you talk to Mr. Mangum when he was 24 preparing his expert opinion for this case on the 25 damages?</p>	<p>9</p> <p>1 me a series of questions. 2 Q. Do you have an understanding as to what 3 date he used as the frame of reference for the 4 negotiation of a royalty? 5 A. No, I don't. 6 Q. I'll just represent to you that at page 7 7 of his reports, he says May of 2002 is when he says 8 he understands anyway that the infringement allegedly 9 began. 10 A. Okay. 11 Q. And so that's the date he used. 12 All right? 13 A. Okay. 14 Q. Now, as of May of 2002, what was your role 15 with ePlus? 16 A. Same as it is today. 17 Q. What was the title at that time? 18 A. It was president of ePlus Systems and 19 Content Services. 20 Q. In 2001, ePlus acquired the patents from 21 ProcureNet. 22 Right? 23 A. Yes. 24 Q. As part of the acquisition process and 25 reporting the acquisition to shareholders and the</p>
<p>1 A. I have spoken to Mr. Mangum, yes. 2 Q. Do you have an understanding that his 3 assessment of damages relates to coming up with a 4 royalty arrangement between a hypothetical licensor 5 and licensee? 6 A. Well, I do understand that his role is to 7 come up with an assessed level of damages. How he 8 does it and what the laws are about that, I'm 9 unfamiliar with, but just to come up with a damage 10 estimation. 11 Q. Do you know anything about whether or not 12 part of his analysis does include trying to determine 13 what a reasonable royalty would be that would be 14 negotiated between a licensor of the patents and a 15 licensee? 16 A. I would suspect that would be one of the 17 elements that he would use. 18 Q. Did he talk to you at all about that issue 19 when you talked to him? 20 A. Did he talk to me specific to what issue? 21 Q. About the fact that his analysis included 22 looking at this reasonable royalty that would be 23 entered between a licensor and a licensee? 24 A. No, I don't believe we talked about his 25 role. I knew him as the damages expert, and he asked</p>	<p>10</p> <p>1 like, ePlus did a valuation of the assets acquired 2 from ProcureNet. 3 Correct? 4 A. No, not that I'm aware of, I can't say 5 that to be true. 6 MR. McDONALD: Would you mark this as the 7 next exhibit, please. 8 (Lawson Exhibit No. 58 9 was marked for 10 identification.) 11 BY MR. McDONALD: 12 Q. Entitled, ePlus acquisition of Structured 13 Computer Services and SourceSys Inc., valuation 14 methodologies and valuations. 15 Right? 16 A. Okay. 17 Q. Have you seen this document before? 18 A. I have, yes. 19 Q. What is it? 20 A. It's a document that describes the 21 transaction that had taken place with the acquisition 22 of the software and the services of the company that 23 was acquired. And -- just looking through it again. 24 Just give me a minute. 25 (Pause.)</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 A. I'm not -- I don't recall the exact nature 2 of the document. It may have been put together for a 3 10-K or description of the transaction. 4 BY MR. McDONALD: 5 Q. Even though the title doesn't have the 6 name ProcureNet in it, when you read the overview on 7 page 1, it specifically refers to ePlus Inc. 8 purchased the commercial technology business assets 9 of ProcureNet Inc. 10 Correct? 11 A. Yes, it does. 12 Q. And those assets include 2 distinct 13 business units, Structured Computer Services, in 14 Avon, Connecticut, and SourceSys in Houston. 15 Right? 16 A. That's correct. 17 Q. So that's why the title talks about 18 Structured Computer Services and SourceSys. They 19 both used to be business units of ProcureNet? 20 A. That's correct. 21 Q. Before the acquisition by ePlus, did you 22 work for ProcureNet? 23 A. I did, yes. 24 Q. What was your position with ProcureNet 25 just before the acquisition by ePlus?</p>	13	<p>1 Q. Who was involved in preparing exhibit 58? 2 A. I don't recall specifically. 3 Q. As the spokesperson for ePlus today, the 4 corporate-designated witness on valuations, can you 5 give me any information at all about who prepared 6 this document? 7 A. I don't specifically recall who wrote the 8 document or prepared it. 9 Q. Do you have any general recollections 10 about that? 11 A. It would be speculation, but -- 12 Q. Well, I'll take what I can get at this 13 point. 14 Who do you think was most likely to have 15 been involved in preparing this valuation document, 16 exhibit 58? 17 A. It may have been a gentleman by the name 18 of Clay Parkhurst. 19 Q. Does he currently work for ePlus? 20 A. He does. 21 Q. What's his position? 22 A. He's I believe senior vice president of 23 ePlus. 24 Q. Do you have any reason to believe he would 25 know any more about this document, exhibit 58, than</p>	15
<p>1 A. I believe it was senior vice president of 2 business development. 3 Q. So after the acquisition, did you 4 immediately become an employee of ePlus? 5 A. After the acquisition, I did become an 6 employee of ePlus. 7 Q. Is it true that at the time in 2001, when 8 ePlus acquired the assets of ProcureNet, ePlus was a 9 publicly traded company? 10 A. Yes. 11 Q. And so you had a duty to report accurate 12 information to shareholders and the SEC about 13 financial issues. 14 Correct? 15 A. Well, I think any public company has a 16 responsibility to do it to the best of their ability, 17 yes. 18 Q. Right. As a publicly traded company, 19 you're just like every other publicly traded company. 20 Right? 21 A. Correct. 22 Q. And so part of that accurate 23 reporting has to do with valuation of assets. 24 Correct? 25 A. To the best of their ability, yes.</p>	14	<p>1 you do? 2 A. He may or may not. I don't know. 3 Q. Are you comfortable testifying today as 4 the ePlus corporate-designated witness about this 5 valuation document? 6 A. I believe so. 7 Q. I know you've had a chance to page through 8 the document. 9 Have you seen it before today? 10 A. I did see it briefly the other day. 11 Q. Okay. Did you see it the other day for 12 purposes of preparing for today's deposition -- 13 A. Yes. 14 Q. -- or for some other purpose? 15 A. Yes. 16 Q. This was for today? 17 A. Correct. 18 Q. Had you seen it at any time before you saw 19 it a few days ago to prepare for today's deposition? 20 A. I believe I may have. 21 Q. How long ago was the last time you saw it 22 before a few days ago? 23 A. Maybe 5 plus years ago. 24 Q. Did you see it around 2001, which was the 25 date of the acquisition that's referenced here?</p>	16

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 A. No.</p> <p>2 Q. Are you sure about that?</p> <p>3 A. Yes.</p> <p>4 Q. How is it that you're sure that you didn't</p> <p>5 see it around 2001?</p> <p>6 A. Because it really came to my attention as</p> <p>7 I recall during our litigation with Ariba.</p> <p>8 Q. If we look at the first paragraph of this</p> <p>9 document in the middle of the page, do you see</p> <p>10 there's a section called, objectives?</p> <p>11 A. Yes.</p> <p>12 Q. Is it your understanding that one of the</p> <p>13 objectives of this valuation described here in</p> <p>14 exhibit 58 was to allocate the purchase price of the</p> <p>15 assets over all of the tangible assets and any</p> <p>16 identifiable intangible assets at the 2 ProcureNet</p> <p>17 companies?</p> <p>18 A. Yes.</p> <p>19 Q. And for purposes of this document, was a</p> <p>20 fair market value, or FMV, used to value the assets?</p> <p>21 A. That's what it says, yes.</p> <p>22 Q. And fair market value is defined here in</p> <p>23 that paragraph about objectives as, quote, the price</p> <p>24 for which property would exchange between a willing</p> <p>25 buyer and a willing seller, each having reasonable</p>	<p>17</p> <p>1 the objectives, it indicates how much ePlus paid for</p> <p>2 these assets in cash and other consideration.</p> <p>3 Correct?</p> <p>4 A. Yes.</p> <p>5 Q. And it lists there a million dollars in</p> <p>6 actual cash.</p> <p>7 Right?</p> <p>8 A. Correct.</p> <p>9 Q. And then ePlus transferred to ProcureNet</p> <p>10 422,833 shares of ePlus stock; is that right?</p> <p>11 A. That's correct.</p> <p>12 Q. So ProcureNet Inc., they continued as a</p> <p>13 business entity after this acquisition; is that</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. And the 9-dollar and 16-cent price, was</p> <p>17 that based on some sort of a look at the stock market</p> <p>18 and whatever the price was on the day of the</p> <p>19 purchase?</p> <p>20 A. I believe it was as of the date of the</p> <p>21 execution of the agreement that was the stock price.</p> <p>22 Q. So that would have been on or about May</p> <p>23 15th, 2001.</p> <p>24 Correct?</p> <p>25 A. I believe so.</p>
<p>18</p> <p>1 knowledge of all relevant facts, neither under</p> <p>2 compulsion to buy or sell, and with equity to both,</p> <p>3 quote.</p> <p>4 Do you see that language?</p> <p>5 A. I do.</p> <p>6 Q. So this is in effect an attempt to</p> <p>7 determine if you had 2 hypothetical buyers and</p> <p>8 sellers with appropriate knowledge, that would be the</p> <p>9 fair value that one would sell and one would buy each</p> <p>10 given asset for; is that right?</p> <p>11 MR. STRAPP: Objection, mischaracterizes</p> <p>12 the witness's testimony.</p> <p>13 A. Do you want --</p> <p>14 BY MR. McDONALD:</p> <p>15 Q. You may answer. If you think you need</p> <p>16 to -- if I got it wrong, let me know, but is that a</p> <p>17 fair statement?</p> <p>18 A. Just repeat the statement for me, please.</p> <p>19 MR. McDONALD: Could you read that back.</p> <p>20 (The reporter read the</p> <p>21 next-to-last question.)</p> <p>22 A. I think that's a fair characterization as</p> <p>23 depicted by the document.</p> <p>24 BY MR. McDONALD:</p> <p>25 Q. On the first page of the document, above</p>	<p>18</p> <p>20</p> <p>1 Q. So when you determined the dollar value of</p> <p>2 the shares that day, that adds up to 3,873,150</p> <p>3 dollars.</p> <p>4 Correct?</p> <p>5 A. That's what it says, yes.</p> <p>6 Q. And then there was an assumption of</p> <p>7 liabilities for 1,370,512 dollars.</p> <p>8 Correct?</p> <p>9 A. Correct.</p> <p>10 Q. What is an assumption of liabilities?</p> <p>11 A. That's outstanding -- it could be</p> <p>12 outstanding debt. It could be rent. It could be a</p> <p>13 number of different things. I don't recall. I'd</p> <p>14 have to look at the -- if there was a breakdown of</p> <p>15 what the liabilities were at that point in time. The</p> <p>16 liabilities could be, you know, something that's</p> <p>17 deferred, not guaranteed.</p> <p>18 Q. They would be liabilities of ProcureNet</p> <p>19 Inc. formerly.</p> <p>20 Correct?</p> <p>21 A. Correct.</p> <p>22 Q. And then as part of the deal, ePlus would</p> <p>23 say, well, ProcureNet, you used to owe somebody some</p> <p>24 money or something, now we'll take over that</p> <p>25 obligation.</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 A. That's correct.</p> <p>2 Q. Okay. Now, if we turn to the third page</p> <p>3 of the document, exhibit 58, that's got the heading,</p> <p>4 valuation of assets.</p> <p>5 Correct?</p> <p>6 A. Yes, it does.</p> <p>7 Q. And it lists some categories of assets</p> <p>8 under that heading.</p> <p>9 Correct?</p> <p>10 A. It does.</p> <p>11 Q. The first category is, furniture, fixture,</p> <p>12 and equipment.</p> <p>13 Right?</p> <p>14 A. M-hm, yes.</p> <p>15 Q. That's pretty self-explanatory. That</p> <p>16 would be things like desks and chairs, maybe some</p> <p>17 hardware and things like that that were acquired.</p> <p>18 Correct?</p> <p>19 A. Correct.</p> <p>20 Q. So you had to come up with a fair market</p> <p>21 value for those assets as part of this valuation</p> <p>22 process.</p> <p>23 Correct?</p> <p>24 A. That's correct, and I think it says they</p> <p>25 used some Blue Books here to do that.</p>	<p>21</p> <p>1 and ranged from 4 weeks to 13 weeks.</p> <p>2 And then they evaluate what the cost would</p> <p>3 be to potentially replace via new hire, put a number</p> <p>4 on that, and then they come up with a calculation</p> <p>5 that I think was attached to some exhibit of how they</p> <p>6 come up with that number.</p> <p>7 Q. Yes. It does refer to an exhibit, but it</p> <p>8 looks like it's got the number right here in this</p> <p>9 paragraph number 1, a total for the 2 business units</p> <p>10 of 554,017 dollars.</p> <p>11 Correct?</p> <p>12 A. That's what they're estimating.</p> <p>13 Q. Were you part of that work force that they</p> <p>14 were estimating at that time, or does that not</p> <p>15 include you?</p> <p>16 A. I don't believe it actually included me at</p> <p>17 the time.</p> <p>18 Q. Were you part of either that SES unit or</p> <p>19 the SSI unit?</p> <p>20 A. I actually spanned both units while I was</p> <p>21 at ProcureNet.</p> <p>22 Q. Do you know whether there's some</p> <p>23 executives of ProcureNet that weren't part of this</p> <p>24 work force evaluation?</p> <p>25 A. Well, there were certainly some that were</p>	<p>23</p>
<p>1 Q. Blue Books would be like when you're going</p> <p>2 to sell a car, you go to a book and figure out what</p> <p>3 the fair value is of the car.</p> <p>4 Same thing for the desks and chairs and</p> <p>5 the like?</p> <p>6 A. I believe so, that's correct.</p> <p>7 Q. Then the next category lists intangible</p> <p>8 assets.</p> <p>9 Correct?</p> <p>10 A. Yes.</p> <p>11 Q. And there are 5 numbered categories of</p> <p>12 intangible assets on this third page.</p> <p>13 Correct?</p> <p>14 A. That's correct.</p> <p>15 Q. First one is, assembled work force.</p> <p>16 Right?</p> <p>17 A. Yes.</p> <p>18 Q. Can you explain what assembled work force</p> <p>19 is in terms of how you value that?</p> <p>20 A. Well, there was roughly 20 -- I think the</p> <p>21 number was 24 or 23 -- people that were brought on</p> <p>22 from Avon and 26 from the Houston operations. And</p> <p>23 the estimate or the valuations of the assembled work</p> <p>24 force is, as it's stated here, the estimate number of</p> <p>25 weeks it would take a new hire to become productive,</p>	<p>22</p> <p>1 not brought over as one example. And I believe</p> <p>2 myself was not included. And, yeah, it would be</p> <p>3 myself and others that weren't carried over.</p> <p>4 Q. Okay. So was anybody other than you</p> <p>5 carried over but excluded from the work force</p> <p>6 evaluation?</p> <p>7 A. I couldn't say for sure. I'd have to go</p> <p>8 back and see if somebody has the list of who was part</p> <p>9 of that group. Again, I'm speculating, but I didn't</p> <p>10 believe I was part of that initially.</p> <p>11 Q. All right. What's your basis for</p> <p>12 believing you weren't part of that group?</p> <p>13 A. I didn't agree to come over initially.</p> <p>14 Q. How long after -- when you say, initially,</p> <p>15 do you mean on May 15th, 2001, when they actually</p> <p>16 acquired the assets, you hadn't agreed at that time?</p> <p>17 A. Well, up to the point of the execution of</p> <p>18 the agreements, I was still doing my own negotiation</p> <p>19 as it relates to, you know, myself potentially</p> <p>20 joining ePlus and what capacity that might be in.</p> <p>21 Q. Okay. So the date on this document, and</p> <p>22 I've seen other places, of May 15th, 2001, seems to</p> <p>23 be the capital D date of the ePlus acquisition of</p> <p>24 ProcureNet.</p> <p>25 So was it sometime after that date that</p>	<p>24</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 you think you agreed to come over?</p> <p>2 A. You know, it could have been a week before</p> <p>3 or a week after. I couldn't -- I'm trying to recall</p> <p>4 and I don't recall which exactly it was.</p> <p>5 Q. All right. But you do recall that</p> <p>6 initially, you said no?</p> <p>7 A. No, I didn't say no.</p> <p>8 Q. Just didn't say yes?</p> <p>9 A. I didn't say yes.</p> <p>10 Q. Okay. So you had your own separate</p> <p>11 negotiations --</p> <p>12 A. I did.</p> <p>13 Q. -- apart from the rest of the work force?</p> <p>14 A. I did.</p> <p>15 Q. Okay. So let's go to the second category</p> <p>16 here of intangible assets on page 3 of exhibit 58.</p> <p>17 That is, purchased software.</p> <p>18 Do you see that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. It says under that heading number 2,</p> <p>21 purchase software, quote, purchased software</p> <p>22 comprises of licenses of operating systems, office</p> <p>23 applications, and other miscellaneous utilities and</p> <p>24 programs. It has been valued at net book value, NBV,</p> <p>25 which is original purchase price minus accumulated</p>	<p>25</p> <p>1 A. When I joined the company, which was just</p> <p>2 under a year prior to the acquisition by ePlus, the</p> <p>3 software was there. The history, you know, I don't</p> <p>4 know exactly when it was developed by ProcureNet or</p> <p>5 prior.</p> <p>6 Q. Did ProcureNet buy the Procure Plus</p> <p>7 software?</p> <p>8 A. Again, before my time, but I think I</p> <p>9 recall that ProcureNet was rolled out by -- as a</p> <p>10 rollout company of Fisher Scientific.</p> <p>11 Q. So is it your understanding that</p> <p>12 ProcureNet bought the Procure Plus software from</p> <p>13 Fisher Scientific?</p> <p>14 A. No. I believe, again, to the best of my</p> <p>15 knowledge, that ProcureNet was created as a company</p> <p>16 by Fisher Scientific.</p> <p>17 Q. Okay. So the Procure Plus software was</p> <p>18 not purchased by ProcureNet.</p> <p>19 Correct?</p> <p>20 A. It's before my time, so I couldn't -- I</p> <p>21 couldn't answer that.</p> <p>22 I'm sorry.</p> <p>23 Q. Well, the reason why I'm asking those</p> <p>24 questions is that in the second sentence of the</p> <p>25 section on purchased software, it talks about</p>
<p>1 amortization. It is estimated by ePlus management</p> <p>2 that NBV is the true value of such software on the</p> <p>3 date of purchase, quote.</p> <p>4 Do you see that language?</p> <p>5 A. I do.</p> <p>6 Q. Do you have an understanding of what</p> <p>7 specific software was included within this valuation</p> <p>8 of purchased software?</p> <p>9 A. Well, the purchased software was the</p> <p>10 electronic procurement system and our content</p> <p>11 solutions that were out of our Houston, Texas,</p> <p>12 facility.</p> <p>13 Q. Well, I want to double-check that with</p> <p>14 you.</p> <p>15 When you say that's the e-procurement</p> <p>16 system and content stuff, that would be the stuff</p> <p>17 that was developed internally, the software developed</p> <p>18 internally at ProcureNet.</p> <p>19 Right?</p> <p>20 A. What do you mean?</p> <p>21 Q. The e-procurement system software?</p> <p>22 A. I believe it's what we refer to today as</p> <p>23 Proceed Plus.</p> <p>24 Q. Procure Plus was developed at ProcureNet,</p> <p>25 right, the software?</p>	<p>26</p> <p>1 calculating the value of the software based on,</p> <p>2 quote, original purchase price minus accumulated</p> <p>3 amortization, quote.</p> <p>4 Do you see that language?</p> <p>5 A. I do.</p> <p>6 Q. I'm just trying to figure out, did the</p> <p>7 Procure Plus software even have an original purchase</p> <p>8 price associated with it?</p> <p>9 A. I don't know.</p> <p>10 Q. So do you know one way or the other</p> <p>11 whether purchased software, section 2 here, the</p> <p>12 valuation, includes a valuation specifically of the</p> <p>13 Procure Plus software or not?</p> <p>14 A. I don't.</p> <p>15 Q. Now, if we go to category 3, capitalized</p> <p>16 software.</p> <p>17 Do you see that one?</p> <p>18 A. I do.</p> <p>19 Q. The first 2 sentences of that section say,</p> <p>20 quote, this purchased software is valued using</p> <p>21 discounted cash flow method. The procurement</p> <p>22 software developed by SES is fully functional at the</p> <p>23 date of purchase and is being used by many customers,</p> <p>24 quote.</p> <p>25 Do you see that language?</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

	<p>29</p> <p>1 A. I do.</p> <p>2 Q. Then it goes on in the next sentence to</p> <p>3 say, quote, it is one of the most valuable intangible</p> <p>4 assets acquired by ePlus in this deal, quote.</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Now that you've seen this section 3 here</p> <p>8 about capitalized software, which is separate from</p> <p>9 the purchased software, do you think that actually</p> <p>10 the Procure Plus software falls into the category of</p> <p>11 number 3, the capitalized software?</p> <p>12 MR. STRAPP: Objection, mischaracterizes</p> <p>13 the document.</p> <p>14 A. It doesn't say that. You know, you could</p> <p>15 draw a conclusion by, you know, that, but I couldn't</p> <p>16 be certain.</p> <p>17 BY MR. McDONALD:</p> <p>18 Q. Well, as the witness identified today to</p> <p>19 testify on behalf of ePlus, can you tell me whether</p> <p>20 or not the Procure Plus software was considered for</p> <p>21 purposes of this valuation, exhibit 58, to be</p> <p>22 capitalized software or purchased software or</p> <p>23 something else?</p> <p>24 A. I believe it refers to the software that</p> <p>25 was transferred as the assets from ProcureNet to</p> <p>31</p> <p>1 software as identified in number 3.</p> <p>2 Q. My question is, is the Procure Plus</p> <p>3 software within category 3, capitalized software, or</p> <p>4 category 2, purchased software, or what?</p> <p>5 A. I don't recall.</p> <p>6 Q. Now, the Procure Plus software, is that</p> <p>7 the software that implements the patented technology</p> <p>8 involved with the patents involved in this suit?</p> <p>9 A. The software that was acquired from</p> <p>10 ProcureNet to ePlus, yes.</p> <p>11 Q. That was the Procure Plus software.</p> <p>12 That's what it was called.</p> <p>13 Right?</p> <p>14 A. It was called something else at</p> <p>15 ProcureNet.</p> <p>16 Q. Okay. Do you remember what it was called</p> <p>17 at ProcureNet?</p> <p>18 A. I think it was called One Source, if I'm</p> <p>19 not mistaken.</p> <p>20 Q. Then once ePlus bought it, it changed the</p> <p>21 name from One Source to Procure Plus?</p> <p>22 A. That's correct.</p> <p>23 Q. And with respect to the capitalization of</p> <p>24 the software, that's valuing the actual code written</p> <p>25 for the software, right, on the cost to write the</p>
	<p>30</p> <p>1 ePlus.</p> <p>2 Q. That's not one of the categories here for</p> <p>3 intangible assets, though, as you described it just</p> <p>4 now.</p> <p>5 Right?</p> <p>6 MR. STRAPP: Objection, form.</p> <p>7 MR. McDONALD: I'll withdraw the question.</p> <p>8 BY MR. McDONALD:</p> <p>9 Q. As I understand these categories of</p> <p>10 assets, Mr. Farber, the software has got to fall into</p> <p>11 one of 2 categories. It's either number 2, purchased</p> <p>12 software, or number 3, capitalized software.</p> <p>13 Do I understand correctly or not?</p> <p>14 A. I believe so, yes.</p> <p>15 Q. And as you sit here today, you cannot tell</p> <p>16 me which of those categories the Procure Plus</p> <p>17 software falls into; is that right?</p> <p>18 A. Well, if you look at the next page, the</p> <p>19 third paragraph down, it refers to, based on</p> <p>20 aforementioned facts and assumptions, the future cash</p> <p>21 flows were discounts arrived at a value of a</p> <p>22 million -- a little over a million for the software.</p> <p>23 And then the next sentence says: The</p> <p>24 capitalized software will be amortized over a period</p> <p>25 of 5 years, which would be pointing to capitalized to</p> <p>32</p> <p>1 software itself?</p> <p>2 A. On the capitalized?</p> <p>3 Q. Yes.</p> <p>4 A. Yes, that would be correct.</p> <p>5 Q. The patents-in-suit don't describe the</p> <p>6 actual code written to implement the patented</p> <p>7 technology on the computer.</p> <p>8 Correct?</p> <p>9 A. Can you repeat that?</p> <p>10 I'm sorry.</p> <p>11 Q. Sure. The patents involved in the lawsuit</p> <p>12 here with Lawson, those don't actually set forth the</p> <p>13 computer code, the source code, the object code, or</p> <p>14 any programming code used to implement the invention</p> <p>15 on a computer.</p> <p>16 Right?</p> <p>17 MR. STRAPP: Objection, calls for a legal</p> <p>18 conclusion.</p> <p>19 A. Well, my understanding of the patent is</p> <p>20 that it doesn't provide the code, but it provides I</p> <p>21 believe a description specification.</p> <p>22 BY MR. McDONALD:</p> <p>23 Q. Right. So if somebody was going to try to</p> <p>24 implement the invention described in the patents,</p> <p>25 they'd have to go write their own code.</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 Right?</p> <p>2 MR. STRAPP: Objection, calls for a legal</p> <p>3 conclusion.</p> <p>4 A. I don't know that that's necessarily true.</p> <p>5 You can combine certain elements of code. I mean,</p> <p>6 the patent describes elements that weren't</p> <p>7 necessarily invented by the patent holders but uses,</p> <p>8 you know, other technologies.</p> <p>9 BY MR. McDONALD:</p> <p>10 Q. That's fair. Maybe I oversimplified it</p> <p>11 with my statement. But to implement the invention</p> <p>12 described in the patents, a person, a company would</p> <p>13 have to acquire code whether they had their own</p> <p>14 programmers write it or they acquired it from some</p> <p>15 third-party supplier.</p> <p>16 Correct?</p> <p>17 A. Well, the patent certainly involves an</p> <p>18 application, which is written with some type of</p> <p>19 computer code.</p> <p>20 Q. And was that code for the Procure Plus</p> <p>21 system, formerly known as One Source -- that was</p> <p>22 considered an asset of ProcureNet that ePlus wanted</p> <p>23 to buy.</p> <p>24 Right?</p> <p>25 A. Well, it was considered one of the assets</p>	<p>33</p> <p>1 that ePlus acquired from ProcureNet included 2 of the</p> <p>2 3 patents in this case as issued and one pending</p> <p>3 application for the third one?</p> <p>4 A. Correct.</p> <p>5 Q. So all the patents in this case -- all the</p> <p>6 rights in those patents were purchased by ePlus from</p> <p>7 ProcureNet.</p> <p>8 Right?</p> <p>9 A. That's correct.</p> <p>10 Q. And all of those patents are the subject</p> <p>11 of this valuation in category 4 here of exhibit 58.</p> <p>12 Right?</p> <p>13 A. The patents that are in suit here, yes,</p> <p>14 they would be in category 4.</p> <p>15 Q. Did ePlus acquire any patents in addition</p> <p>16 to the 3 patents and applications in this suit when</p> <p>17 they bought ProcureNet?</p> <p>18 A. Yes, actually I believe there were some</p> <p>19 patents from our Houston facility.</p> <p>20 Q. Houston is the SourceSys Inc. --</p> <p>21 A. Correct.</p> <p>22 Q. -- unit?</p> <p>23 A. That's correct.</p> <p>24 Q. What did those patents from SourceSys Inc.</p> <p>25 involve?</p>	<p>35</p>
<p>1 that ePlus was interested in.</p> <p>2 Q. And ePlus did buy that actual code from</p> <p>3 ProcureNet from One Source, which became Procure</p> <p>4 Plus.</p> <p>5 Right?</p> <p>6 A. Well, yes, they purchased the application</p> <p>7 and the resources and some of the liability that went</p> <p>8 along with operating companies.</p> <p>9 Q. So if we look at the valuation here for</p> <p>10 the capitalized software as you pointed out, it was a</p> <p>11 little over a million dollars, specifically 1,075,000</p> <p>12 dollars for the software, the capitalized software.</p> <p>13 Right?</p> <p>14 A. That is what's listed here, yes.</p> <p>15 Q. And then for the purchased software on the</p> <p>16 prior page, it lists a figure of 59,867 for the SCS</p> <p>17 purchased software and 18,247 dollars for the SSI</p> <p>18 software.</p> <p>19 Correct?</p> <p>20 A. That's what they're listing here, yes.</p> <p>21 Q. So let's turn to the fourth category of</p> <p>22 intangible assets now, patents.</p> <p>23 A. Okay.</p> <p>24 Q. Right?</p> <p>25 Is it your understanding that the patents</p>	<p>34</p> <p>1 A. They were referred to as the information</p> <p>2 translation protocol content patents.</p> <p>3 Q. Can you tell me generally what those</p> <p>4 patents related to?</p> <p>5 A. It related to a technology that was</p> <p>6 developed that involved something called the common</p> <p>7 language generator that was used in an advanced</p> <p>8 fashion of creating catalogs for suppliers or for</p> <p>9 retail organizations, which was part of what SES used</p> <p>10 to do.</p> <p>11 Q. So the common language generator patents</p> <p>12 came from SourceSys.</p> <p>13 Did the 3 patents in this suit then --</p> <p>14 those were part of Structured Computer Systems in</p> <p>15 Connecticut?</p> <p>16 A. Yeah. They were part of ProcureNet, so I</p> <p>17 don't know if they -- they date back to Structured</p> <p>18 Computer or whatever, but they were part of the</p> <p>19 ProcureNet acquisition.</p> <p>20 Q. Was Avon, Connecticut, the location of the</p> <p>21 employees who were involved with the Procure Plus or</p> <p>22 at that time One Source software?</p> <p>23 A. Yeah. Avon was involved with the Procure</p> <p>24 Plus software, yes. We also had some people in New</p> <p>25 Jersey and some people in Pittsburgh.</p>	<p>36</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 Q. Did ePlus use the common language 2 generator technology after it acquired the assets 3 from ProcureNet? 4 A. We still use it today. 5 Q. So it's still used today to generate 6 catalog content? 7 A. It's used for service -- mainly services 8 business for customers that may or may not be 9 associated with our procurement software. 10 Q. So when you say, your services business, 11 can you explain what you mean by that? 12 A. Well, there's a -- there are times where 13 companies are asking us to help them work with their 14 suppliers to create their own catalogs and to take 15 information that is not very descriptive and help 16 them categorize it to specific schemas or codes. 17 Q. All right. So in this valuation, after 18 ePlus acquired the assets of ProcureNet, the 19 valuation placed on all the patents, including the 3 20 involved in this lawsuit plus those additional 21 patents, was a total of how much money? 22 A. According to this document, it's saying 23 here that it was 12,000 dollars. 24 Q. So all 3 patents in this suit plus the 25 additional ones total -- collected together, total</p>	<p>37 39</p> <p>1 Right? 2 A. I believe so. 3 Q. And that's when you were trying to get a 4 lot of money and damages from Ariba at that point. 5 Right? 6 A. It was when I was trying to understand how 7 they came up with 12,000 dollars, and I spoke to 8 individuals about that to find out how it was 9 characterized at 12,000 dollars. 10 Q. You didn't like that number. 11 It was pretty small. 12 Right? 13 MR. STRAPP: Objection, argumentative, 14 assumes facts not in evidence. 15 A. I don't know how that numbers affects 16 litigation whatsoever. I know it became a point of 17 interest during the Ariba trial, that that was raised 18 by Ariba's counsel, and I had to do my due diligence 19 to find out what was deciphered and how they came up 20 with that number. 21 BY MR. McDONALD: 22 Q. This document states that the number 23 12,000 dollars was developed by the fair market 24 value. 25 Correct?</p>
<p>1 price for the whole package, 12,000 dollars. 2 Do I understand that correctly? 3 A. That's how they calculated it at that 4 time. 5 Q. And that was based on a fair market value 6 calculation. 7 Correct? 8 A. It was according to this document what 9 they're saying is a fair market value. But it was 10 actually -- administrative processing is how they 11 came up with the 12,000-dollar number. 12 Q. I thought you weren't involved in 13 preparing exhibit 58. 14 A. I'm sorry? 15 Q. Were you involved in preparing this 16 valuation or not? 17 A. Not in this valuation, but I was very 18 involved in understanding how this valuation specific 19 to the patents were valued. 20 Q. At what time were you very involved with 21 that? 22 A. When we were involved with the Ariba 23 litigation. 24 Q. That was 3 years after this document was 25 prepared.</p>	<p>38 40</p> <p>1 MR. STRAPP: Objection, vague. 2 A. The document states that it was what they 3 considered to be a fair market value at that time, 4 yes. 5 BY MR. McDONALD: 6 Q. For all the patents? 7 A. That's what it says. 8 Q. And on the first page, again, the fair 9 market value is determined by this willing buyer, 10 willing seller exchange. 11 Correct? 12 A. It does say that, yes. 13 Q. And this valuation -- this was used for 14 purposes of disclosures regarding assets and 15 financial information for ePlus to the SEC and to 16 shareholders. 17 Correct? 18 MR. STRAPP: Objection, assumes facts not 19 in evidence. 20 BY MR. McDONALD: 21 Q. You may answer. 22 A. I don't know if this was provided for the 23 SEC or for a 10-K. It was -- you know, it was a 24 document that was, you know, prepared. It doesn't 25 state what it was included in or how it was -- what</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 it was provided for.</p> <p>2 Q. Well, the fifth category right after</p> <p>3 patents, that's goodwill.</p> <p>4 Correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And you understand that there are</p> <p>7 categories in the disclosures to ePlus's shareholders</p> <p>8 after this acquisition for assets, including goodwill</p> <p>9 and other categories, that would include these</p> <p>10 patents.</p> <p>11 Right?</p> <p>12 A. I would believe so, correct.</p> <p>13 Q. Are you aware of any other valuations done</p> <p>14 in 2001 that would relate to valuing the patents for</p> <p>15 purposes of reporting asset value to shareholders</p> <p>16 other than exhibit 58?</p> <p>17 A. I don't believe so. ePlus didn't do a</p> <p>18 formal valuation from a third party as it relates to</p> <p>19 the software, the patents, or the other assets. They</p> <p>20 used Blue Book for assets as we described earlier,</p> <p>21 you know, office supplies and so on and so forth, but</p> <p>22 there are third-party companies that do valuations of</p> <p>23 software assets, patent assets, and none of those</p> <p>24 were done during that acquisition or post.</p> <p>25 Q. But it's your understanding that ePlus did</p>	<p>41</p> <p>1 and as they became aware of the patents insisted that</p> <p>2 the patents be transferred as part of that asset sale</p> <p>3 from ProcureNet.</p> <p>4 It's then my understanding what occurred</p> <p>5 in that asset sale is that there wasn't really a</p> <p>6 formal valuation done, but there was principals</p> <p>7 within ePlus that checked with counsel to determine</p> <p>8 what the cost of transferring these patents over to</p> <p>9 ePlus through, you know, paper means and</p> <p>10 administrative means, what has to occur and what</p> <p>11 those costs would be. And that was approximately</p> <p>12 12,000 dollars.</p> <p>13 And then ePlus made an agreement, verbal</p> <p>14 agreement with Fisher, is, we'll call the fair market</p> <p>15 value of 12,000 dollars for the patents. That will</p> <p>16 cover the cost of the administration fees and will be</p> <p>17 bundled in with the whole asset transfer.</p> <p>18 Q. So you're just describing the interaction</p> <p>19 between ProcureNet and ePlus leading up to the close</p> <p>20 of the sale; is that right?</p> <p>21 A. The process of the negotiation and the</p> <p>22 closing of the sale.</p> <p>23 Q. Exhibit 58, though, that's generated just</p> <p>24 by ePlus, right, the valuation document here?</p> <p>25 A. I don't know if it was generated -- what</p>
<p>1 truthfully disclose to its shareholders in its 2001</p> <p>2 and 2002 reports values of its assets?</p> <p>3 A. I think to the best of ePlus's ability</p> <p>4 without third-party valuation they reported the</p> <p>5 transaction, what the purchase price was, the assets,</p> <p>6 and the liabilities. We'd have to look at the 10-K,</p> <p>7 which I don't know off the top of my head of when</p> <p>8 this information was reported during that time, and</p> <p>9 we'd specifically see what was publicly announced.</p> <p>10 Q. Do you believe that a third-party</p> <p>11 evaluation of the value of the patents would have</p> <p>12 been necessary to come up with a fair valuation in</p> <p>13 2001?</p> <p>14 A. Yes.</p> <p>15 Q. Why didn't ePlus do a third-party analysis</p> <p>16 of that valuation in 2001?</p> <p>17 A. What actually transpired during the</p> <p>18 acquisition process is, ePlus negotiated with</p> <p>19 ProcureNet and Fisher and the principals to acquire</p> <p>20 the technology and liabilities that we've been</p> <p>21 discussing. And what transpired is, ePlus at some</p> <p>22 point during the process of discussion of interest in</p> <p>23 the technologies became aware of the patents. And in</p> <p>24 the closing minutes or days of that transaction as</p> <p>25 the document was being prepared for the acquisition</p>	<p>42</p> <p>1 do you mean, the document that describes the 12,000</p> <p>2 dollars?</p> <p>3 Q. Yeah --</p> <p>4 A. This is an ePlus document.</p> <p>5 Q. Right. This was generated after the</p> <p>6 acquisition.</p> <p>7 Right?</p> <p>8 A. Yes, I believe that's correct.</p> <p>9 Q. So after that, there's no time pressure.</p> <p>10 There's no reason to limit the valuation to whatever</p> <p>11 was done in the waning days of the acquisition, is</p> <p>12 there?</p> <p>13 A. I don't think there's waning pressures, if</p> <p>14 you will, but they reported accurately what they had</p> <p>15 done with coming up with the numbers with ProcureNet</p> <p>16 and Fisher. And I don't think it tries to state</p> <p>17 anything less or anything more.</p> <p>18 Q. Well, exhibit 58 does not state that the</p> <p>19 figure 12,000 dollars was developed based on</p> <p>20 ProcureNet telling ePlus that that's how much it</p> <p>21 would cost to transfer the patents.</p> <p>22 Right?</p> <p>23 A. No, it doesn't say that in this document,</p> <p>24 that's correct.</p> <p>25 Q. It does say it was based on fair market</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 value.</p> <p>2 Right?</p> <p>3 A. It's estimated by ePlus management what</p> <p>4 they refer to as fair market value, correct.</p> <p>5 Q. Is there some reason why ePlus would state</p> <p>6 in this valuation document that the value of the</p> <p>7 patents was determined by fair market value if in</p> <p>8 fact it was not determined by fair market value?</p> <p>9 A. I could only suspect, but I'm sure this</p> <p>10 document was vetted by attorneys as well as auditors</p> <p>11 to come up with the language of what should be</p> <p>12 written.</p> <p>13 Q. And based on that vetting process, it was</p> <p>14 determined that it was an accurate statement that the</p> <p>15 12,000-dollar valuation of the patents was an</p> <p>16 accurate fair market value assessment as defined here</p> <p>17 in exhibit 58?</p> <p>18 A. That's how it's characterized here.</p> <p>19 Q. I know that's how its characterized, but</p> <p>20 could you answer my question?</p> <p>21 MR. STRAPP: Objection, asked and</p> <p>22 answered.</p> <p>23 A. I did. I thought I answered it.</p> <p>24 BY MR. McDONALD:</p> <p>25 Q. So while it's characterized here that way,</p>	<p>45</p> <p>1 A. Okay.</p> <p>2 Q. But there was a time period when ePlus was</p> <p>3 interested in acquiring ProcureNet's business assets</p> <p>4 without even knowing that ProcureNet had patents.</p> <p>5 Did I understand you right?</p> <p>6 A. I think the first letter that ePlus had</p> <p>7 written to ProcureNet expressing an interest in the</p> <p>8 company or the software, there was not mention to my</p> <p>9 recollection of patents or their knowledge of</p> <p>10 patents. Earlier on in the discussion, the patents</p> <p>11 came up but weren't talked about or included through</p> <p>12 those discussions, and it was near the end of the</p> <p>13 discussions that ePlus stated, we have to make sure</p> <p>14 that the patents are transferred over as well, and</p> <p>15 they got into a dialogue and a negotiation with both</p> <p>16 ProcureNet and Fisher at that time.</p> <p>17 Q. Is it fair to say that ePlus's primary</p> <p>18 interest in acquiring assets of ProcureNet was to get</p> <p>19 the procurement software developed by ProcureNet?</p> <p>20 A. I can't say what was going -- the</p> <p>21 motivation of what was going on in ePlus's mind at</p> <p>22 the time that I wasn't working for them, so I'm not</p> <p>23 in a position to be able to say to.</p> <p>24 Q. All right. Well, your prior answers</p> <p>25 though indicated some understanding of what ePlus was</p>	<p>47</p>
<p>1 you think it's an accurate characterization.</p> <p>2 Right?</p> <p>3 A. Accurate characterization as it's listed</p> <p>4 here, yes.</p> <p>5 Q. So if I understood you right, when ePlus</p> <p>6 was going through the process of acquiring the assets</p> <p>7 of ProcureNet, they weren't even aware of the patents</p> <p>8 of ProcureNet at the beginning of the process.</p> <p>9 Correct?</p> <p>10 A. I don't believe they were aware of it at</p> <p>11 the beginning, yes.</p> <p>12 Q. What is your understanding as to why ePlus</p> <p>13 was interested in buying the assets of ProcureNet?</p> <p>14 A. ePlus is a risk-adverse company. They</p> <p>15 have looked at other companies in the past that had</p> <p>16 gotten themselves into legal issues in infringing</p> <p>17 other people's patents, and as a risk-adverse</p> <p>18 company, they saw that -- or believed that there was</p> <p>19 some protection around the fact that there were</p> <p>20 patents that were -- that came along with these</p> <p>21 assets, and they wanted to ensure that protection for</p> <p>22 themselves in the ownership of those patents.</p> <p>23 Q. Okay. Maybe I wasn't clear with my</p> <p>24 question. I was going back to the time before ePlus</p> <p>25 even knew ProcureNet had patents.</p>	<p>46</p> <p>1 thinking during the course of negotiations, so I</p> <p>2 mean, have you ever talked to anybody from ePlus to</p> <p>3 say to what their thought process was prior to the</p> <p>4 closing of the acquisition of the ProcureNet assets?</p> <p>5 A. Yes.</p> <p>6 Q. Who have you talked to about that?</p> <p>7 A. I've spoken to management of the company.</p> <p>8 Q. Who specifically by name?</p> <p>9 A. Phillip Norton, our CEO, Steve Mencarini,</p> <p>10 and Clay Parkhurst.</p> <p>11 Q. This valuation document at the bottom of</p> <p>12 page 3 indicates that the capitalized software was,</p> <p>13 quote, one of the most valuable intangible assets</p> <p>14 acquired by ePlus in this deal, quote.</p> <p>15 Do you see that, or bottom of page 3 to</p> <p>16 the top of page 4?</p> <p>17 A. Oh, I'm sorry.</p> <p>18 I do see that, yes.</p> <p>19 Q. Is it fair to say that the acquisition of</p> <p>20 that capitalized software identified as one of the</p> <p>21 most valuable intangible assets acquired by ePlus in</p> <p>22 the deal was also one of the main motivations for</p> <p>23 ePlus to buy the assets?</p> <p>24 A. I think they were -- they were absolutely</p> <p>25 interested in the software for their business.</p>	<p>48</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 Q. There's no claim by the way in this case 2 that Lawson has copied any software or taken any code 3 or anything from ePlus. 4 Correct? 5 A. Not to my knowledge. 6 Q. As far as you know, Lawson wrote their own 7 code to make their procurement systems, right, or got 8 them from third parties by purchasing them? 9 MR. STRAPP: Objection, calls for 10 speculation. 11 A. I don't believe that we're accusing Lawson 12 of taking or stealing code from ePlus. How they 13 have the code, whether it's developed, acquired 14 through a third party, I don't have knowledge of. 15 BY MR. McDONALD: 16 Q. But in any event, the code that's 17 described here as one the most valuable intangible 18 assets acquired by ePlus, that's not code that 19 Lawson's ever had access to. 20 Correct? 21 A. The application code that was acquired by 22 ProcureNet? 23 No, I wouldn't believe so. 24 Q. At the time of the acquisition of assets 25 from ProcureNet by ePlus, did ePlus grant ProcureNet </p>	<p>49</p> <p>1 My question is, do you recognize this 2 document? 3 A. It appears to be what I probably looked at 4 5 years ago or so. 5 Q. Is it the license agreement between ePlus 6 and ProcureNet? 7 A. Appears to be, yes. 8 Q. So you have not looked at this again 9 recently in preparation for today's deposition? 10 A. No, I haven't. 11 Q. This license agreement between ePlus and 12 ProcureNet, this was part of the negotiated agreement 13 between ePlus and ProcureNet in 2001. 14 Right? 15 A. I believe so, yes. 16 Q. And at the time, ePlus and ProcureNet had 17 no prior relationship with each other. 18 Right? 19 A. Not to my knowledge. 20 Q. So this is kind of a situation where the 21 price for the acquisition of assets was in effect a 22 market price determined by a willing buyer and a 23 willing seller who are independent of each other. 24 Right? 25 A. I don't know that you would say, market </p> <p>51</p>
<p>1 a license under the patents-in-suit? 2 A. Yes, they did. 3 Q. Have you seen that license? 4 A. I had seen the license in the past, yes. 5 Q. When had you seen it? 6 A. Maybe about 5 years ago as well, 5, 6 7 years ago. 8 Q. Do you have any idea why that agreement 9 wasn't part of the document productions by ePlus to 10 Lawson until just last week? 11 A. I have no knowledge of that. 12 MR. McDONALD: Mark this as the next 13 exhibit, please. 14 (Lawson Exhibit No. 59 15 was marked for 16 identification.) 17 BY MR. McDONALD: 18 Q. Mr. Farber, you've been handed exhibit 59, 19 entitled, intellectual property license agreement. 20 The first paragraph indicates that it's dated May 15, 21 2001, between ePlus Inc. and ProcureNet Inc. 22 Do you see that? 23 A. I do. 24 Q. I'll give you a chance to review the other 25 pages of this document if you like. </p>	<p>50</p> <p>1 price. I think there were -- it was an agreement of 2 a sales price of the assets between a buyer and a 3 seller. 4 Q. But it's a normal kind of a commercial 5 transaction where the parties are independent of each 6 other and one party is trying to pay as little as 7 they can, the other one is trying to sell it for as 8 much as they can. 9 Right? 10 A. Absolutely. 11 Q. Just like when you're buying or selling a 12 house or something. 13 Right? 14 A. Or a car. 15 Q. Or a car. 16 Just to be clear: When ePlus bought these 17 assets from ProcureNet relating to the patents in 18 this suit, ePlus didn't just get a license. 19 Right? 20 They actually bought the patents hook, 21 line, and sinker. 22 Correct? 23 A. When ePlus acquired the assets, they 24 got the -- well, besides the furniture and the things 25 that we talked about, individuals, people, as well as </p> <p>52</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 the associated software and the patents as well.</p> <p>2 Q. Right. And you understand that getting a</p> <p>3 license under a patent, that's a more limited set of</p> <p>4 rights than actually owning the patents outright?</p> <p>5 A. Say that again. I'm sorry.</p> <p>6 Q. It's a more limited set of rights under</p> <p>7 those patents than if you were actually going to own</p> <p>8 the patents outright.</p> <p>9 Correct?</p> <p>10 A. Getting a license to use the patents has</p> <p>11 less rights than owning the patents, I would agree</p> <p>12 with that.</p> <p>13 Q. Right. So this agreement 59, exhibit 59</p> <p>14 here, this was a license from ePlus to ProcureNet of</p> <p>15 the patents that ePlus was buying from ProcureNet as</p> <p>16 part of the deal.</p> <p>17 Right?</p> <p>18 A. That's correct.</p> <p>19 Q. So that would include the patents involved</p> <p>20 in this suit?</p> <p>21 A. I believe so, yes.</p> <p>22 Q. Is it true that ProcureNet paid nothing</p> <p>23 for this license?</p> <p>24 A. I think that as part of the deal, ePlus</p> <p>25 granted a zero-price license to ProcureNet.</p>	<p>53</p> <p>1 Q. Did they continue to use the procurement</p> <p>2 software after they were acquired by another company?</p> <p>3 A. No, they didn't.</p> <p>4 Q. How do you know that?</p> <p>5 A. I checked.</p> <p>6 Q. Well, when did you check?</p> <p>7 A. When they were acquired, which was 4, 5</p> <p>8 years ago.</p> <p>9 Q. How did you check?</p> <p>10 A. How did I check?</p> <p>11 Q. Yes.</p> <p>12 A. I knew people that still worked in the</p> <p>13 organization. I asked them what they were using,</p> <p>14 what they were doing, how their business had changed,</p> <p>15 so on and so forth. Within the year or so that they</p> <p>16 actually had -- that I was aware as ProcureNet as a</p> <p>17 stand-alone operation was using our solution, they</p> <p>18 hadn't asked for any updates, and they were changing</p> <p>19 their business model and what they were doing as a</p> <p>20 company and concentrating more on just logistics, and</p> <p>21 they sold to another logistics company, so they</p> <p>22 really had no reason to use the software.</p> <p>23 Q. Other than the license between ePlus and</p> <p>24 ProcureNet, are you aware of any other licenses under</p> <p>25 the patents-in-suit that were outside the context of</p>
<p>1 Q. Why wasn't the license agreement one that</p> <p>2 includes a royalty?</p> <p>3 A. It's not -- it's not uncommon through</p> <p>4 acquisition that when one party buys the other</p> <p>5 companies that they cross -- give a cross-license,</p> <p>6 zero-cost license agreement.</p> <p>7 Q. Why was it done in this case?</p> <p>8 A. It's not an uncommon business practice. I</p> <p>9 guess you can say it was a thank you for doing</p> <p>10 business. ePlus got what they wanted. You know,</p> <p>11 the -- ProcureNet wanted to protect themselves</p> <p>12 because they were still in business as an entity, and</p> <p>13 they still had wanted to use, you know, part of the</p> <p>14 software for components of their business, and both</p> <p>15 parties were happy to get what they wanted.</p> <p>16 So again it's not an uncommon practice</p> <p>17 from a buyer and a seller.</p> <p>18 Q. After the May 2001 acquisition, did</p> <p>19 ProcureNet continue using procurement software that</p> <p>20 it had sold to ePlus?</p> <p>21 A. They may have for a very short time.</p> <p>22 Q. Why do you say it was for a short time?</p> <p>23 A. I think they were later acquired, or the</p> <p>24 remaining component of their business was acquired by</p> <p>25 another company.</p>	<p>54</p> <p>1 a lawsuit?</p> <p>2 A. No, I'm not aware of any.</p> <p>3 Q. We had looked at exhibit 57 a little</p> <p>4 earlier here, a license agreement between ProcureNet</p> <p>5 and Fisher Scientific, and I guess some other</p> <p>6 entities as well.</p> <p>7 A. Okay.</p> <p>8 Q. I think you indicated you had reviewed</p> <p>9 this particular agreement before testifying today.</p> <p>10 Was that right?</p> <p>11 A. Actually, I was wrong. I apologize.</p> <p>12 I had seen this agreement, this document.</p> <p>13 Q. Wait.</p> <p>14 Which is, this, here?</p> <p>15 A. I'm sorry.</p> <p>16 What was marked as 58, exhibit 58, the</p> <p>17 ePlus acquisition of Structured Computer Services,</p> <p>18 the valuation document. I hadn't gone through this</p> <p>19 yesterday or the day before though.</p> <p>20 Q. Have you seen exhibit 57 before today?</p> <p>21 A. Yes.</p> <p>22 Q. How long ago did you see it?</p> <p>23 A. Oh, gosh, 2000, 2001 time frame.</p> <p>24 Q. Why were you looking at it back at that</p> <p>25 time?</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 A. I think it had to do with the use of the 2 licenses by ProcureNet, or it might have been around 3 the time that the acquisition had taken place, and I 4 was checking the agreement to see if they were going 5 to use it, because I didn't know at that time if 6 there were transfer rights and so on associated with 7 it.</p> <p>8 Q. So you were trying to assess the rights in 9 the patents that ProcureNet had because they were 10 looking at transferring those rights?</p> <p>11 A. Correct, potentially transferring those 12 rights, yes.</p> <p>13 Q. Okay. Did you at that time determine what 14 were the circumstances of this license agreement 15 between ProcureNet and Fisher Scientific that's 16 exhibit 57?</p> <p>17 A. Can you repeat that?</p> <p>18 I'm sorry.</p> <p>19 Q. Sure. Did you talk to anybody about the 20 context for this agreement or the circumstances 21 surrounding the license between ProcureNet and Fisher 22 Scientific?</p> <p>23 A. Not that I recall, no.</p> <p>24 Q. This exhibit 57 indicates that it's a 25 software license agreement.</p>	<p>57</p> <p>1 Q. It's page 700139 in the very lower right 2 corner -- lower right.</p> <p>3 A. Okay. 139.</p> <p>4 Q. 700139.</p> <p>5 A. I have it.</p> <p>6 Q. So that looks like kind of the initial 7 page of a software license agreement.</p> <p>8 Right?</p> <p>9 It's got the heading up there, software 10 license agreement?</p> <p>11 A. Yeah, it does say that, yes.</p> <p>12 Q. Now, in the first paragraph, it's 13 describing these parties, and ProcureNet is one of 14 the parties.</p> <p>15 Right?</p> <p>16 A. Correct.</p> <p>17 Q. Then there's a company, Strategic Computer 18 Services Inc., who is also a party.</p> <p>19 Correct?</p> <p>20 A. Correct.</p> <p>21 Q. What's the relationship at this time of 22 1999 between ProcureNet and Strategic Computer 23 Services?</p> <p>24 A. I don't -- I really don't recall.</p> <p>25 Q. Do you have any idea why somebody would</p>
<p>58</p> <p>1 Correct?</p> <p>2 A. That's correct.</p> <p>3 Q. It's dated April 14th, 1999.</p> <p>4 Correct?</p> <p>5 A. That's correct.</p> <p>6 Q. Is it your understanding that under this 7 agreement -- let me back up a little bit here. Let's 8 get the parties straight.</p> <p>9 Under this agreement, exhibit 57, who was 10 the party that was doing the licensing and who was 11 receiving the license?</p> <p>12 A. Well, I believe this agreement had to do 13 with the transfer of the licenses of spinning out 14 from Fisher Scientific to ProcureNet.</p> <p>15 Q. So is it your understanding that Fisher 16 had transferred the assets to ProcureNet and then 17 ProcureNet was giving a license back to Fisher?</p> <p>18 A. Correct.</p> <p>19 Q. I'd have to say, I'm a little confused.</p> <p>20 If we turn to the fourth page of the 21 document with the actual heading, software license 22 agreement.</p> <p>23 A. Fourth page?</p> <p>24 Q. Yeah, of the document.</p> <p>25 A. What page?</p>	<p>60</p> <p>1 abbreviate Strategic Computer Services "SPS"?</p> <p>2 A. No, I don't.</p> <p>3 Q. That just struck me as a little odd.</p> <p>4 A. This does look odd.</p> <p>5 Q. And then there's these 2 Fisher Scientific 6 entities that are also identified as parties.</p> <p>7 Correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Now, under the recitals, it looks like 10 recital B kinds of summarizes the asset transfer.</p> <p>11 Correct?</p> <p>12 A. Yes.</p> <p>13 Q. It says: This Fisher Scientific 14 International Inc. entity transferred the assets of 15 the electronic commerce division of its wholly owned 16 subsidiary to ProcureNet, which then transferred 17 those assets to Strategic Computer Services.</p> <p>18 Right?</p> <p>19 A. This is what it says, yes.</p> <p>20 Q. All right. And so -- in C it goes on and 21 says: In connection with the spinoff, then 22 ProcureNet and SPS are willing to grant and Fisher is 23 willing to accept a license.</p> <p>24 Correct?</p> <p>25 A. Yes.</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 Q. And the license is to use software owned 2 or licensed for use by SPS for certain specified 3 purposes. 4 Right? 5 A. That's correct. 6 Q. So under this agreement, did Fisher 7 actually get the code itself? 8 A. I don't know if Fisher received the code 9 or not. 10 Q. All right. Well, if you turn to the next 11 page of the agreement, the one 700140, numbered page 12 2. 13 A. Yes. 14 Q. In middle of the page there, do you see a 15 definition for licensed software? 16 A. Yes, I do. 17 Q. It says, quote: It shall mean the 18 CornerStone and SupplyLink computer programs as 19 described in schedule B hereto, quote. 20 Do you see that? 21 A. I do. 22 Q. What are CornerStone and SupplyLink? 23 A. I think those were solutions that either 24 Fisher acquired or had at the time. 25 Q. Do those relate to procurement?</p>	<p>61</p> <p>1 A. As a spokesperson for ePlus, I and ePlus 2 would be speculating, but it appears that that would 3 be the case. It was again before both our times. 4 Q. And in addition to the licensed software, 5 this agreement also involved a license for licensed 6 software intellectual property. 7 Correct? 8 A. Where are you looking? 9 Q. If we can go back to page 2 of the 10 agreement, which was 700140. 11 A. Yes. What paragraph? 12 Q. Right above, licensed software, in the 13 middle of the page, do you see a paragraph, licensed 14 software intellectual property? 15 A. Yes, I do. 16 Q. And so those were both licensed under this 17 agreement, right, both the software and the software 18 intellectual property? 19 A. Yes. I don't -- 20 Q. Well, we can go to the grant of license 21 here. 22 A. Yeah. I was just looking to see if it 23 correlated to any specific -- okay. That's fine. Go 24 ahead. I'm sorry. 25 Q. So if you turn to page numbered 3 of the</p>
<p>62</p> <p>1 A. They may have. I don't have detailed 2 knowledge of those solutions. That was before my 3 time or ePlus's time with Fisher. 4 Q. If we turn to the second-to-the-last page 5 of exhibit 57, 700154. 6 A. 154, yes. 7 Q. That's the schedule B that's referenced 8 there in the licensed software definition. 9 Right? 10 A. Yes, it does relate back to exhibit B, 11 yes. 12 Q. All right. So schedule B looks like it 13 does list certain versions of the CornerStone and 14 SupplyLink software. 15 Correct? 16 A. Yes. 17 Q. Then also gives documentation that goes 18 along with those, including for example SupplyLink 19 source code file with notes and CornerStone source 20 code file with notes. 21 Right? 22 A. That's correct. 23 Q. So does it at least appear to you here as 24 the spokesperson for ePLUS that this license 25 agreement included the code itself?</p>	<p>62</p> <p>1 agreement, or 700141. 2 A. Yes. 3 Q. Paragraph 2.1 is the grant of the license 4 to Fisher. 5 Correct? 6 A. Correct. 7 Q. And that's a license for both the licensed 8 software and the licensed software intellectual 9 property as well as documentation. 10 Correct? 11 A. That's correct, yes. 12 Q. Do you have an understanding as to whether 13 this agreement, exhibit 57, licensed the rights 14 related to the patents involved in this lawsuit? 15 A. I have no clue. That's why I was seeing 16 if they -- it just looked like according to this 17 document that it dealt with the software -- the 18 associated code and documentation. I didn't see any 19 reference to patents. 20 Q. Well, if you go back to page 2. 21 A. Yes. 22 Q. The definition of licensed software 23 intellectual property does include patents, including 24 U.S. and foreign applications and continuations, 25 necessary for the operation of the licensed software.</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 Right?</p> <p>2 A. Intellectual property should be no</p> <p>3 copyright patent -- yeah, I think that's a pretty</p> <p>4 broad statement that's pretty standard in all</p> <p>5 agreements, but I don't see any cross-listing as we</p> <p>6 do in exhibit B as to the -- you know, a similar</p> <p>7 exhibit.</p> <p>8 Schedule A is plan. Schedule B is</p> <p>9 software and documentation. Schedule C has some</p> <p>10 equipment, it looks like, and I don't see anything</p> <p>11 that refers to the actual patents.</p> <p>12 Q. Okay. So you don't know whether or not</p> <p>13 the patents involved in this suit are necessary for</p> <p>14 use with this Cornerstone and SupplyLink software or</p> <p>15 not?</p> <p>16 A. No, I wouldn't know.</p> <p>17 Q. Are you aware of any particular patents</p> <p>18 that would be included within this agreement, exhibit</p> <p>19 57?</p> <p>20 A. I don't personally, no.</p> <p>21 MR. McDONALD: I think we're at the end of</p> <p>22 the tape here, so why don't we take a little break.</p> <p>23 THE WITNESS: Okay.</p> <p>24 THE VIDEOGRAPHER: This ends videotape</p> <p>25 number 1 in the deposition Kenneth Farber. The time</p>	<p>65</p> <p>1 analysis.</p> <p>2 Q. Do you know what it means -- the heading</p> <p>3 there is, opening journal entries.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Do you know what that phrase means?</p> <p>7 A. It's the accounting entries that were</p> <p>8 apparently posted, you know, at some point in time,</p> <p>9 so some point in time going forward, they're referred</p> <p>10 to it as, you know, the existing or current journal</p> <p>11 entries.</p> <p>12 Q. The term opening suggests to me anyway</p> <p>13 that this would maybe be the initial accounting</p> <p>14 entries for the acquisition of the assets from</p> <p>15 ProcureNet.</p> <p>16 Is that your interpretation of this or</p> <p>17 not?</p> <p>18 A. It could be, yes. It would appear that</p> <p>19 way.</p> <p>20 Q. In any event, it does list under ePlus</p> <p>21 systems some figures, including 12,000 for patents.</p> <p>22 Correct?</p> <p>23 A. Let me see where you're looking.</p> <p>24 Do it does.</p> <p>25 Q. That's under the heading, ePlus systems.</p>	<p>67</p>
<p>1 is now 11:07 AM.</p> <p>2 (Recess.)</p> <p>3 THE VIDEOGRAPHER: We're now back on the</p> <p>4 record.</p> <p>5 This is the beginning of videotape number</p> <p>6 2 in the deposition of Kenneth Farber. The time is</p> <p>7 now 11:24 AM. You may proceed.</p> <p>8 MR. McDONALD: Would you mark this as the</p> <p>9 next exhibit, please.</p> <p>10 (Lawson Exhibit No. 60</p> <p>11 was marked for</p> <p>12 identification.)</p> <p>13 BY MR. McDONALD:</p> <p>14 Q. Mr. Farber, you've been handed what was</p> <p>15 marked as exhibit 60, 60. This one has a production</p> <p>16 number in the lower right corner that is the next</p> <p>17 page following the valuation document that we had</p> <p>18 been talking about earlier that was marked I believe</p> <p>19 exhibit 58. So I'll just point that out to you.</p> <p>20 Can you tell me whether exhibit 60 somehow</p> <p>21 relates to exhibit 58, the valuation document?</p> <p>22 A. I don't know actually for sure.</p> <p>23 Q. All right. Do you know what exhibit 60</p> <p>24 is?</p> <p>25 A. It looks like some form of a financial</p>	<p>66</p> <p>1 Correct?</p> <p>2 A. Correct.</p> <p>3 Q. That's about the eighth entry on the list</p> <p>4 there?</p> <p>5 A. Yes.</p> <p>6 Q. And that 12,000 figure, that's consistent</p> <p>7 anyway with the exhibit 58 valuation of the patents</p> <p>8 acquired from ProcureNet of 12,000 dollars.</p> <p>9 Right?</p> <p>10 A. As it was characterized in that document,</p> <p>11 correct.</p> <p>12 MR. McDONALD: Would you mark that as the</p> <p>13 next exhibit.</p> <p>14 (Lawson Exhibit No. 61</p> <p>15 was marked for</p> <p>16 identification.)</p> <p>17 BY MR. McDONALD:</p> <p>18 Q. Mr. Farber, you've been handed exhibit 61,</p> <p>19 which again appears to have some financial figures</p> <p>20 referring to exhibits 1, exhibit 2, exhibit 3 on the</p> <p>21 top of each of the 3 pages of that exhibit.</p> <p>22 A. Okay.</p> <p>23 Q. Do you recognize exhibit 61?</p> <p>24 A. No, not by just looking at it, I don't.</p> <p>25 Q. If we go back to exhibit 58, the valuation</p>	<p>68</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 document.</p> <p>2 A. Yes.</p> <p>3 Q. If you can turn to page 2.</p> <p>4 Do you see there's some paragraphs on that</p> <p>5 page, page 2?</p> <p>6 A. Yes.</p> <p>7 Q. At the end of each one, there's a</p> <p>8 reference to an exhibit. For the first paragraph,</p> <p>9 it's exhibit 1, the second paragraph, exhibit 2, and</p> <p>10 the third paragraph, exhibit 3.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do those paragraphs appear to match up</p> <p>14 with the exhibits 1, 2, and 3 of exhibit 61, or not?</p> <p>15 A. Let's see, they appear to, yes, by name,</p> <p>16 yeah, at least by the title, sure.</p> <p>17 Q. So these have to do with some liabilities</p> <p>18 that were acquired as part of ePlus's acquisition of</p> <p>19 ProcureNet?</p> <p>20 A. It does, yes.</p> <p>21 MR. McDONALD: Would you mark that as the</p> <p>22 next exhibit, please.</p> <p>23 (Lawson Exhibit No. 62</p> <p>24 was marked for</p> <p>25 identification.)</p>	<p>69</p> <p>1 A. That's correct.</p> <p>2 Q. And does that appear to be the backup</p> <p>3 substantiation for the valuation of assembled work</p> <p>4 force at page 3 of exhibit 58?</p> <p>5 A. It appears to be.</p> <p>6 Q. And if we go to the second page of exhibit</p> <p>7 62, that's called exhibit 7, valuation of capitalized</p> <p>8 software.</p> <p>9 Correct?</p> <p>10 A. Yes.</p> <p>11 Q. Is that the backup for the description of</p> <p>12 the capitalized software at pages 3 to 4 of exhibit</p> <p>13 58?</p> <p>14 A. Appears to be, yes.</p> <p>15 Q. Can you explain why there's -- it's set</p> <p>16 forth here in exhibit 7 3 years, year 1, year 2, year</p> <p>17 3?</p> <p>18 A. I think they're just projections.</p> <p>19 Q. Well, if you go back to the last page of</p> <p>20 exhibit 58 at the very top.</p> <p>21 A. Okay.</p> <p>22 Q. It's talking at the top still about</p> <p>23 capitalized software.</p> <p>24 Right?</p> <p>25 A. Yes.</p>	<p>71</p>
<p>1 BY MR. McDONALD:</p> <p>2 Q. You've been handed exhibit 62, but before</p> <p>3 we go to that, let's just stick with 61 for a moment,</p> <p>4 Mr. Farber.</p> <p>5 A. Yes.</p> <p>6 Q. If you look at the second page of exhibit</p> <p>7 61, that's called, exhibit 2, liability for deferred</p> <p>8 software license sales.</p> <p>9 A. Okay.</p> <p>10 Q. Do you have an understanding as to what</p> <p>11 that is about?</p> <p>12 A. Well, what it appears to be is -- looks</p> <p>13 like there was a deferment of payment from the</p> <p>14 Washington Department of Labor for 30,000 dollars.</p> <p>15 Q. So the Department of Labor had already</p> <p>16 paid for some software, but it had not been delivered</p> <p>17 yet by May 15.</p> <p>18 Does appear to be the deal?</p> <p>19 A. Yes, I believe so.</p> <p>20 Q. Okay. So let's go to exhibit 62.</p> <p>21 A. Okay.</p> <p>22 Q. Does -- the first page of exhibit 62</p> <p>23 that's entitled, exhibit 6, valuation of assembled</p> <p>24 work force.</p> <p>25 Correct?</p>	<p>70</p> <p>1 Q. And the first full sentence on page 4, it</p> <p>2 says, quote: It is estimated by ePlus management</p> <p>3 that this software as it exists today will have a</p> <p>4 useful economic life of 3 years before it undergoes</p> <p>5 either substantial modifications and improvements or</p> <p>6 is completely rewritten from scratch to meet the</p> <p>7 future customer needs and to keep pace with rapid</p> <p>8 changes in hardware and software technology, quote.</p> <p>9 Do you see that sentence?</p> <p>10 A. I do.</p> <p>11 Q. So that refers to a 3-year expected or</p> <p>12 useful economic life of that capitalized software.</p> <p>13 Right?</p> <p>14 A. The software as it existed or as delivered</p> <p>15 to ePlus by ProcureNet, they estimated as it was</p> <p>16 written 3 years without major rewrites or upgrades or</p> <p>17 enhancements to it.</p> <p>18 Q. So was this exhibit 7 in effect trying to</p> <p>19 determine the income that will be generated by that</p> <p>20 software for that 3-year useful economic life and</p> <p>21 then come up with a present value of that?</p> <p>22 A. Yeah. I think it's best-guess estimates</p> <p>23 based on what they had at that time, sure.</p> <p>24 Q. And do you have an understanding whether</p> <p>25 this software that's being described in exhibit 7 --</p>	<p>72</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 is that the One Source software that became Procure 2 Plus or something else? 3 A. I believe it was, yes. 4 Q. It was the One Source? 5 A. I believe so, yes. 6 Q. Do you see for year 1 the total revenues 7 listed at 5,182,480? 8 A. Yes. 9 Q. Around the time of the acquisition of the 10 ProcureNet assets by ePlus, what were the annual 11 revenues for software sales maintenance, training, 12 subscription revenues, all the associated revenues 13 for the One Source software? 14 A. Oh, gosh, at the time -- I don't recall 15 the revenue at that particular point in time. 16 Q. Was it around 5.2 million or so? 17 A. I don't know. I'd have to go back and 18 look at documents on that. 19 Q. And if you look at the third page of 20 exhibit 62. 21 A. Okay. 22 Q. Does this also appear to be supporting 23 documentation for the valuation in exhibit 58? 24 A. Yeah. It looks to be a calculation of 25 goodwill test based on their projections.</p>	<p>73</p> <p>1 Q. Did ProcureNet complete that initial 2 public offering? 3 A. They did not complete the IPO. 4 Q. Did they withdraw the offering? 5 A. I believe they may have withdrawn. 6 Q. You were there at the time? 7 A. I was. 8 Q. Why did they withdraw the offering? 9 A. Well, the entire market was imploding, the 10 e-commerce market exploded in the late '90s, and 11 ProcureNet and Fisher both were very late to the 12 table to file an S 1 for a future IPO, and at the 13 time of the filing, everything else was -- in the 14 market was falling apart, and the attractiveness of 15 anything that began with an E, e-commerce, you know, 16 or anything of that nature, people were not investing 17 in. 18 They were just -- the market was running 19 scared at that point in time, because a lot of 20 companies that did IPO lost a lot of money, and 21 investors were not as open to jumping in as they were 22 in the past, so we never completed it. 23 Q. Did ProcureNet fail to find underwriters 24 for it? 25 MR. STRAPP: A continuing objection to</p>
<p>1 Q. If you look near the bottom of exhibit 8 2 with line item number 9 under, assets purchased, you 3 see again there patents with a valuation of 12,000 4 dollars. 5 Q. Correct? 6 A. Yeah. It says, 12,000 estimated, yes. 7 Q. Before ePlus acquired these assets of 8 ProcureNet back in 2000, ProcureNet was seeking to 9 have an initial public offering; is that right? 10 A. That is correct. 11 Q. Why is it that ProcureNet wanted to have 12 an initial public offering in 2000? 13 A. Well, I think -- 14 MR. STRAPP: Objection, beyond the scope 15 of the deposition topics. 16 Go ahead. 17 THE WITNESS: Okay. 18 A. I think for the purposes of expansions, 19 you know, and potentially acquiring other companies 20 and doing more marketing and bringing more resources 21 into the company that they could afford to have that 22 venture at that point in time, so as to way to 23 increase the presence, the branding, and the strength 24 of the company. 25 BY MR. McDONALD:</p>	<p>74</p> <p>1 this line of questioning as beyond the scope of the 2 noticed deposition topics. 3 A. I mean, my belief it wasn't a matter of 4 underwriting. It was more of -- you could always 5 find underwriters, but it's what do you want to 6 achieve as a company, and was it the right time to do 7 an IPO, and it was not the right time. 8 The philosophy of wanting to do an IPO was 9 appropriate at the time they decided to file the S 1, 10 but between the time the S 1 was done and shortly 11 thereafter what was occurring in the market, it 12 didn't make sense whatsoever. 13 MR. McDONALD: Would you mark this as the 14 next exhibit, please. 15 (Lawson Exhibit No. 63 16 was marked for 17 identification.) 18 BY MR. McDONALD: 19 Q. Mr. Farber, you've been handed exhibit 63. 20 I'll tell you I don't know who put that handwriting 21 in the upper right corner. That's kind of how we got 22 it, but do you recognize this? 23 And obviously take the time you need to 24 get familiar with it. 25 At least generally recognize this as a</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 copy of the application by ProcureNet Inc. back in 2 2000 to file for an initial public offering? 3 A. Yes. 4 Q. Were you involved at all in the 5 presentation of this S 1? 6 A. A little bit. 7 Q. What was your role? 8 A. My role was reviewing it. My role was 9 getting some facts related to what we did and what we 10 intended to do as a company. 11 Q. On the very first page there near the 12 bottom, there's a line where it says, proposed 13 maximum aggregate offering price of 10 million 14 dollars. 15 Do you see that? 16 A. I do. 17 Q. Is that figure essentially what ProcureNet 18 hoped to raise when it filed this offering proposal? 19 A. I think they hoped to raise more, but that 20 was the initial offering. 21 Q. And so this was never completed. 22 Right? 23 A. One was filed. 24 Q. Okay. But the offering itself was never 25 completed?</p>	<p>77</p> <p>1 you know -- it was in the '99 time frame. 2 Q. Okay. Well, this particular page if you 3 look at the second paragraph up there, it says, 4 quote, in April of 1999, we were spun off from Fisher 5 and became a stand-alone company, quote. 6 Do you see that? 7 A. Yes, I do. 8 Q. You don't have any reason to dispute that. 9 Right? 10 A. None whatsoever. 11 Q. Now, just before that in early '99, did 12 ProcureNet acquire Structured Computer Systems? 13 A. I don't know if it was ProcureNet or 14 Fisher that did. I don't recall the facts 15 surrounding those acquisitions. 16 Q. Okay. But either Fisher or ProcureNet did 17 acquire Structured Computer Systems; is that right? 18 A. I believe that's correct, yes. 19 Q. What was the business of Structured 20 Computer Systems when it was purchased? 21 A. I know that they were a software company, 22 and I don't know if they did anything else at that 23 time. 24 Q. If you could turn to the page 448824. 25 A. 24?</p>	<p>79</p>
<p>1 A. That's correct. 2 Q. S 1 was filed with the Securities and 3 Exchange Commission. 4 Right? 5 A. That's correct. 6 Q. And the S 1, you tried to be as accurate 7 as you could about all the statement and facts set 8 forth. 9 A. Sure. 10 Q. Right? 11 If you turn to the page -- the lower 12 corner would be 448719. 13 A. Yes. 14 Q. This has got a summary of historical 15 financial information. 16 Correct? 17 A. Correct. 18 Q. Now, is it true that ProcureNet wasn't 19 informed until January of 1999? 20 A. Before my time, but that sounds about 21 right. 22 Q. And then Fisher actually spun ProcureNet 23 off as a separate entity in about April of '99. 24 Correct? 25 A. Again, before my time, but that sounds,</p>	<p>78</p> <p>1 Q. 8824. 2 A. Okay. Okay. 3 Q. This is an attachment to the S 1 filing. 4 Correct? 5 A. Yes. 6 Q. Up at the top, it says, Structured 7 Computer Systems Inc. 8 A. I think I'm on the wrong -- I'm sorry. 9 Did you say 8724? 10 Q. 448824. 11 A. 88. 12 I apologize. 13 Q. Sure. 14 A. You went way down. Okay. That's what I'm 15 doing wrong. 16 Okay. 17 Q. So it's an attachment that's part of the S 18 1 filing. 19 Right? 20 A. Okay. 21 Q. It's entitled, Structured Computer Systems 22 Inc. notes to financial statements, year ended 23 January 31, '98, and the period ended January 12, 24 '99. 25 Correct?</p>	<p>80</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 A. Okay. Yes.</p> <p>2 Q. You see under section 1 there, it</p> <p>3 indicates that Structured Computer Systems Inc. is an</p> <p>4 established developer and marketer of enterprise</p> <p>5 procurement software under the brand named Reality</p> <p>6 and operating in only one segment, quote.</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. Are you familiar with the software</p> <p>10 marketed under the brand name Reality?</p> <p>11 A. No, not really, just by name of hearing</p> <p>12 it.</p> <p>13 Q. Do you have any idea why ProcureNet would</p> <p>14 be interested in acquiring Structured Computer</p> <p>15 Systems or its Reality brand enterprise procurement</p> <p>16 software in 1999?</p> <p>17 MR. STRAPP: Objection, calls for</p> <p>18 speculation beyond the scope of the deposition</p> <p>19 documents.</p> <p>20 A. I have no knowledge of what occurred at</p> <p>21 that juncture.</p> <p>22 BY MR. McDONALD:</p> <p>23 Q. Okay. In any event, the next paragraph</p> <p>24 indicates that in January of '99, ProcureNet acquired</p> <p>25 all of the outstanding stock of Structured Computer</p>	<p>81</p> <p>1 information document from '95 up through March 31,</p> <p>2 2000, this division lost money?</p> <p>3 A. That's what it's stating, yes.</p> <p>4 Q. And in the last full year, it lost over 24</p> <p>5 million dollars?</p> <p>6 A. Right.</p> <p>7 In the last year of what, '99, 2000?</p> <p>8 Q. The year ending December 31, 1999, is the</p> <p>9 last full year.</p> <p>10 Correct?</p> <p>11 (Pause.)</p> <p>12 BY MR. McDONALD:</p> <p>13 Q. The first 5 columns are for full years.</p> <p>14 Right?</p> <p>15 A. Yeah. I'm just looking through it to make</p> <p>16 sure.</p> <p>17 Q. Okay.</p> <p>18 A. Yep, that's correct. That's what it's</p> <p>19 saying. I'm just trying to determine if this was</p> <p>20 the -- I'm just trying to recall if this was all of</p> <p>21 ProcureNet. Nevertheless, yes, that's correct.</p> <p>22 Q. All right. Then right up until the 3</p> <p>23 months ended March 31, 2000, which is the last period</p> <p>24 covered here, that 3-month period, the company lost</p> <p>25 7,837,000 dollars.</p>
<p>1 Systems.</p> <p>2 Right?</p> <p>3 A. That's what it says, yes.</p> <p>4 Q. So if we go back now to the page early on,</p> <p>5 448719.</p> <p>6 A. Okay.</p> <p>7 Q. This has got some summary financial</p> <p>8 information.</p> <p>9 Correct?</p> <p>10 A. Yes.</p> <p>11 Q. Some of this is for years prior to 1999.</p> <p>12 Right?</p> <p>13 A. That's correct.</p> <p>14 Q. How is it that this data was put together</p> <p>15 for years prior to 1999 if ProcureNet did not exist</p> <p>16 before 1999?</p> <p>17 A. I don't know. I mean, they may have</p> <p>18 included some things that Fisher did in this regard.</p> <p>19 I really -- really don't have the knowledge of that.</p> <p>20 Q. Okay. Is it likely that the pre-1999</p> <p>21 figures are for a Fisher business unit that became</p> <p>22 ProcureNet?</p> <p>23 A. I don't know.</p> <p>24 Q. In any event, is it true that for every</p> <p>25 year shown here on this summary historical financial</p>	<p>82</p> <p>1 Right?</p> <p>2 A. That's right.</p> <p>3 Q. Was ProcureNet ever profitable before it</p> <p>4 sold its assets to ePlus?</p> <p>5 A. I was only there for less than a year, so</p> <p>6 I don't know. I'm looking at the same information</p> <p>7 that you are.</p> <p>8 Q. We're looking at information that</p> <p>9 indicates it was not profitable up until March of</p> <p>10 2000.</p> <p>11 Right?</p> <p>12 A. That's what this states, yes.</p> <p>13 Q. And then you were with the company for</p> <p>14 what year?</p> <p>15 A. Year of the acquisition.</p> <p>16 Q. So the year between spring of 2000 and the</p> <p>17 spring of 2001?</p> <p>18 A. Yes.</p> <p>19 Q. Was ProcureNet profitable during that</p> <p>20 year?</p> <p>21 A. I don't believe so.</p> <p>22 Q. So at the time ProcureNet sold the patents</p> <p>23 and applications involved in this lawsuit to ePlus,</p> <p>24 it had never made a profit on the business.</p> <p>25 Right?</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 A. As far as I'm aware, that's correct.</p> <p>2 Q. In the 2001 time frame, was the market for</p> <p>3 e-commerce-related businesses still such that the</p> <p>4 valuations of those assets were depressed?</p> <p>5 A. In the 2001 time frame?</p> <p>6 Q. Right.</p> <p>7 A. I don't -- I believe it was probably in a</p> <p>8 slow recovery, but I don't think it was at its</p> <p>9 heyday, so I think it's fair to say there was still a</p> <p>10 depression in the market.</p> <p>11 Q. In 2002, was there still the after-effects</p> <p>12 of that?</p> <p>13 A. I think we still feel after-effects today,</p> <p>14 so it's kind of all relative in terms of one's</p> <p>15 opinion.</p> <p>16 Q. After you got hired by ePlus, did ePlus</p> <p>17 continue to look for acquisitions of other</p> <p>18 e-commerce-related businesses?</p> <p>19 A. I think ePlus always looks for</p> <p>20 acquisitions of businesses that can complement or</p> <p>21 supplement our solutions. I wouldn't necessarily</p> <p>22 just characterize them as e-commerce.</p> <p>23 Q. Okay. But did ePlus continue to look for</p> <p>24 acquisitions including businesses in the e-commerce</p> <p>25 area?</p>	85		87
<p>1 A. In that particular space, yeah. I think</p> <p>2 we still do today as well.</p> <p>3 Q. Why is that?</p> <p>4 A. Again, I mean, there's companies that are</p> <p>5 out there that -- not necessarily to replace what we</p> <p>6 have and what we offer our clients, but to augment</p> <p>7 and supplement functionality, enhance functionality</p> <p>8 in other areas in the e-commerce space.</p> <p>9 MR. McDONALD: Mark this as the next</p> <p>10 exhibit, please.</p> <p>11 (Lawson Exhibit No. 64</p> <p>12 was marked for</p> <p>13 identification.)</p> <p>14 BY MR. McDONALD:</p> <p>15 Q. Mr. Farber, do you recognize exhibit 64?</p> <p>16 A. Yes.</p> <p>17 Q. What is it?</p> <p>18 A. Appears to be our annual report from 2001.</p> <p>19 Q. So is this for the period -- would this</p> <p>20 include a period of time after the ProcureNet</p> <p>21 acquisition, or not?</p> <p>22 A. I believe it should have. It's just for</p> <p>23 the fiscal year ending March 31, 2001.</p> <p>24 Q. Okay. And the acquisition, that was May</p> <p>25 of '01; is that right?</p>	86		88

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

	<p>89</p> <p>1 last deposition. There's leasing, sales of leased 2 equipment in terms of remarketing, and lease revenues 3 from the leasing business.</p> <p>4 Q. So none of those 3 businesses have 5 anything to do with e-commerce or e-procurement. 6 Right?</p> <p>7 A. Well, yes and no. There is some crossover 8 between e-commerce solution and equipment and 9 leasing.</p> <p>10 Q. On page 27 here, there's a separate entry 11 for something called, ePlus suite revenues.</p> <p>12 Correct?</p> <p>13 A. That's correct.</p> <p>14 Q. What is your understanding as to what 15 ePlus suite revenues are?</p> <p>16 A. Those are revenues that are stand-alone 17 revenues that are just, somebody is buying our 18 application suite from ePlus and nothing else, so 19 sometimes they're buying or utilizing our commerce 20 suite in connection with our lease operations and our 21 equipment fulfillment operations, and everything just 22 kind of gets buried into those numbers.</p> <p>23 Q. So in 2001, the ePlus suite revenues, that 24 would be -- when you say, a suite, this is software 25 we're talking about.</p>	
	<p>90</p> <p>1 Right?</p> <p>2 A. I believe so. I'd have to see how we 3 referred to the term ePlus suite in here, but --</p> <p>4 Q. Well, if you turn to page 29, I think 5 there's some reference to that in the last paragraph.</p> <p>6 A. Okay, good.</p> <p>7 Q. It looks like to it me anyway, and -- but 8 that last paragraph there, it says, the first 2 9 sentences of the last paragraph, quote: The company 10 has added new classifications to its financial 11 statement presentation. In order to reflect the 12 changes in its business, a line item, ePlus suite 13 revenues, has been added to the statement of earnings 14 that includes the revenues associated with the 15 e-commerce business unit, quote.</p> <p>16 Do you see that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Okay. So does that help you explain what 19 ePlus suite revenues is?</p> <p>20 A. Absolutely.</p> <p>21 Q. So how would you answer that question now 22 if I asked you, what are ePlus suite revenues?</p> <p>23 A. It would be associated with the commerce 24 side of the business as it relates to the acquired 25 software solutions from ProcureNet.</p>	<p>91</p> <p>1 Q. Okay. So even though this is for the year 2 ended March 31, 2001, that 5,685,000 dollars in ePlus 3 suite revenues, that's actually for the ProcureNet 4 software?</p> <p>5 A. That could have also been for some other 6 things that ePlus had at the time that I'm not 7 familiar with.</p> <p>8 Q. Okay. But it does at least include the 9 sales, the software revenues for ProcureNet?</p> <p>10 A. I suspect it does, yes.</p> <p>11 Q. Do they do that because after this annual 12 report was prepared, ePlus had acquired ProcureNet, 13 and so they went to show the results for the acquired 14 entity as well as the prior ePlus entity?</p> <p>15 A. I believe that's correct.</p> <p>16 Q. Okay. So the ProcureNet revenues in the 17 year 2000 were only 1,376,000.</p> <p>18 Right?</p> <p>19 A. Let's see.</p> <p>20 Q. Excuse me. Let me rephrase that question. 21 According to page 27, the ePlus suite 22 revenues were only 1,376,000.</p> <p>23 Right?</p> <p>24 A. In 2000, that was the amount that was 25 contributed to ePlus from that suite. I don't think</p> <p>92</p> <p>1 ePlus had the suite for the entire year, did they?</p> <p>2 Q. Well, they didn't even have it until May 3 of 2001.</p> <p>4 Right?</p> <p>5 A. Right. So they had some commerce-related 6 activity going on in some area that they generated 7 1.3 million from.</p> <p>8 Q. Okay. Why did ePlus separately report the 9 ePlus suite revenues in its 2001 annual report?</p> <p>10 A. Well, I think as you just pointed out in 11 29, the new company added a new classification to its 12 financial statement to reflect changes in its 13 business.</p> <p>14 Q. Now, is it generally true that the 15 acquisition of the e-commerce business of ProcureNet 16 actually increased ePlus's expenses?</p> <p>17 A. Well, certainly, overall expenses. SG and 18 A would go up through the acquisition, yes.</p> <p>19 Q. In 2001, was ePlus trying to shift its 20 business from the sales of equipment, the sales of 21 leased equipment and leased revenues more into the 22 e-commerce area?</p> <p>23 A. I don't think it was a matter of shifting 24 business. It was a matter of creating a new enhanced 25 business model. I don't think the company wavered</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 whatsoever from its fulfillment or leasing business.</p> <p>2 Q. Was that a goal of the company in the</p> <p>3 2001, 2002 time frame, to make e-commerce a bigger</p> <p>4 percentage of its overall revenues?</p> <p>5 A. I think it was -- in the 2001 time frame</p> <p>6 as it is today, I think there was a very strong</p> <p>7 resolve to use e-commerce to empower our other</p> <p>8 businesses as well as operating as a standalone</p> <p>9 business to increase the overall revenues of the</p> <p>10 company.</p> <p>11 Q. As a percentage of its overall revenues,</p> <p>12 has -- the e-commerce software revenues, they really</p> <p>13 haven't grown at all since 2001 as a percentage of</p> <p>14 the company's overall revenues, have they?</p> <p>15 A. Well, if you look at it from a -- again,</p> <p>16 there's 2 aspects of the e-commerce business. One as</p> <p>17 just selling to companies that are just -- have</p> <p>18 interest in a procurement-only solution or a</p> <p>19 content-only solution, and then there's other</p> <p>20 businesses that are very large that -- large and</p> <p>21 small, I should say, that use our commerce</p> <p>22 capabilities as a differentiator from our competitors</p> <p>23 that help drive overall corporate revenue in the</p> <p>24 fulfillment of the leasing business, so it has</p> <p>25 contributed significantly to our overall growth as a</p>	<p>93</p> <p>1 record.</p> <p>2 The time is 12:06 PM. You may proceed.</p> <p>3 BY MR. McDONALD:</p> <p>4 Q. Around the August 2001 time frame, which</p> <p>5 is the date of the letter from the CEO in this annual</p> <p>6 report, did ePlus expect that the expenses associated</p> <p>7 with its e-commerce unit would negatively impact its</p> <p>8 profitability?</p> <p>9 A. Over what period of time?</p> <p>10 Q. Over the next few years.</p> <p>11 A. Well, I think that the company was</p> <p>12 probably hoping that it would contribute more to the</p> <p>13 profitability of the company.</p> <p>14 Q. Did ePlus in that late 2001 time frame</p> <p>15 consider the e-commerce business to be an unproven</p> <p>16 business model in its early stages?</p> <p>17 A. I believe then and I believe if you look</p> <p>18 at anybody's 10-K today, they pretty much say the</p> <p>19 same thing, that there's a lot of unproven things in</p> <p>20 the world of e-commerce.</p> <p>21 Q. Was that true specifically in the late</p> <p>22 2001 time frame?</p> <p>23 A. Sure.</p> <p>24 Q. Why is that?</p> <p>25 A. Well, in -- when you're looking in the</p>
<p>1 company.</p> <p>2 Q. I just have a specific question though</p> <p>3 about the software revenue.</p> <p>4 A. Right.</p> <p>5 Q. Like these ePlus suite revenues that are</p> <p>6 shown here on page 27.</p> <p>7 A. Yes.</p> <p>8 Q. That's a separate revenue source.</p> <p>9 A. Okay.</p> <p>10 Q. Has that e-commerce software revenue</p> <p>11 stayed pretty much flat as a percentage of the</p> <p>12 company's overall revenue since 2001?</p> <p>13 A. Yes.</p> <p>14 Q. Why is that?</p> <p>15 A. Well, there's a lot of reasons I think,</p> <p>16 but I think it's been flat because we have faced a</p> <p>17 lot of competition in the industry, and it's been a</p> <p>18 very difficult time in competing with the resources</p> <p>19 that we have.</p> <p>20 MR. McDONALD: Why don't we take a little</p> <p>21 break here.</p> <p>22 THE VIDEOGRAPHER: All right. We're going</p> <p>23 off the record. The time is 12:04 PM.</p> <p>24 (Recess.)</p> <p>25 THE VIDEOGRAPHER: We're now back on the</p>	<p>94</p> <p>1 '90s, late '90s and early 2000, companies were</p> <p>2 starting to adopt the Internet. They were adopting</p> <p>3 companies that were doing commerce over the Internet.</p> <p>4 There were barriers that had to be crossed as it</p> <p>5 relates to ensuring that there were appropriate</p> <p>6 levels of security and business processes that could</p> <p>7 secure companies' data.</p> <p>8 The industry was fairly new as it relates</p> <p>9 to the commerce space. And there's a lot of</p> <p>10 influencing things back then and today that could</p> <p>11 have an effect on commerce, just as you see</p> <p>12 volatility in the stock market based on people's</p> <p>13 thoughts and beliefs and where they want to put their</p> <p>14 money.</p> <p>15 So there's a lot of factors outside of the</p> <p>16 control of companies.</p> <p>17 MR. McDONALD: Mark this as the next</p> <p>18 exhibit, please.</p> <p>19 (Lawson Exhibit No. 65</p> <p>20 was marked for</p> <p>21 identification.)</p> <p>22 BY MR. McDONALD:</p> <p>23 Q. Mr. Farber, you've been handed what was</p> <p>24 marked as exhibit 65.</p> <p>25 Would it be an ePlus 2002 annual report?</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 A. Yes, it is.</p> <p>2 Q. Were you involved at all in preparing this</p> <p>3 document?</p> <p>4 A. No.</p> <p>5 Q. But you were an executive at ePlus at the</p> <p>6 time?</p> <p>7 A. I was.</p> <p>8 Q. Could you turn to page 25, please, or the</p> <p>9 page marked 133314.</p> <p>10 A. Yes.</p> <p>11 Q. This has got some more consolidated</p> <p>12 statements of earnings information.</p> <p>13 Right?</p> <p>14 A. Yes.</p> <p>15 Q. Do you still have the 2001 annual report</p> <p>16 handy, and can you go to page -- keep that 2002 one</p> <p>17 open while you open up to page 27 again in 2001.</p> <p>18 A. Sure, yes.</p> <p>19 Q. So if you look at the 2002 report, it</p> <p>20 looks like sales went down quite a bit for sales of</p> <p>21 equipment and sales of leased equipment between 2001</p> <p>22 and 2002.</p> <p>23 Correct?</p> <p>24 A. Yes.</p> <p>25 Q. Do you know why?</p>	<p>97</p> <p>1 Q. Why is that?</p> <p>2 A. You know, there was a lot of discussion</p> <p>3 internally about reporting of ePlus suite revenues,</p> <p>4 mainly because we had a very difficult time ourselves</p> <p>5 internally deciphering how to accurately report on it</p> <p>6 and how to decipher the percentage of revenue that</p> <p>7 ePlus suite software generated to our other business</p> <p>8 units and journaling all that information, so it was</p> <p>9 taken out as a specific line item because of our</p> <p>10 internal difficulties in accounting for a lot of that</p> <p>11 revenue.</p> <p>12 Q. It looks like for the 2002 annual</p> <p>13 report when you re-reported the 2001 data, you</p> <p>14 added the fee and other income category to the</p> <p>15 ePlus suite's revenue category to make those 2</p> <p>16 collectively now the fee and other income category;</p> <p>17 is that right?</p> <p>18 A. We are looking -- I'm sorry.</p> <p>19 Q. Let me be real specific here.</p> <p>20 A. Yes.</p> <p>21 Q. If you look at the 2001 reporting, 2001</p> <p>22 annual report, the last year on there is for the</p> <p>23 year-ending March 31, 2001.</p> <p>24 Right?</p> <p>25 A. Yes.</p>
<p>1 A. I don't have a recollection what occurred</p> <p>2 in that period of time.</p> <p>3 Q. Well, that was -- that's the year that --</p> <p>4 well, September 11, 2001, was in the intervening time</p> <p>5 period.</p> <p>6 Right?</p> <p>7 A. That would have been, absolutely.</p> <p>8 Q. That had a big, downward impact on</p> <p>9 revenue; is that right?</p> <p>10 A. I think it had an impact on companies</p> <p>11 overall.</p> <p>12 Q. Oh, I'm not saying you guys were the only</p> <p>13 ones.</p> <p>14 A. Yeah, but I don't want to use that as an</p> <p>15 excuse either.</p> <p>16 Q. Okay. But that was a tough --</p> <p>17 A. It was a tough --</p> <p>18 Q. -- year.</p> <p>19 A. -- year, sure.</p> <p>20 Q. Right. One change in how the information</p> <p>21 is reported I see from '01 to '02 is that in '01, you</p> <p>22 had a separate line item for ePlus suite revenues,</p> <p>23 but I don't see that separate line anymore in the '02</p> <p>24 report.</p> <p>25 A. That's correct.</p>	<p>98</p> <p>1 Q. And those -- you've got 2 numbers there.</p> <p>2 The fee and other income is 7 thousand 9 93.</p> <p>3 Right?</p> <p>4 A. Yes.</p> <p>5 Q. And then the ePlus suite revenue is 5</p> <p>6 million 6 85.</p> <p>7 Right?</p> <p>8 A. That's right.</p> <p>9 Q. Now, I guess it's hard to do the math in</p> <p>10 one's head here, but you if you add those 2 things</p> <p>11 together, they get -- they're about 13 million --</p> <p>12 A. Correct.</p> <p>13 Q. -- 700 thousand or so.</p> <p>14 Right?</p> <p>15 A. Correct.</p> <p>16 Q. And if look at the 2002 annual report now</p> <p>17 reporting the same year, March 31, 2001, the last</p> <p>18 year's data, it's got the number 13 million 6 78 for</p> <p>19 fees and other income now.</p> <p>20 Right?</p> <p>21 A. I'm looking at it, sure.</p> <p>22 Q. There is no number that maps to that in</p> <p>23 the 2001 annual report.</p> <p>24 Right?</p> <p>25 A. Fees and other income, yes, that's</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 correct.</p> <p>2 Q. But it looks to me that if you add the</p> <p>3 fees and other income to the ePlus suite revenue from</p> <p>4 the 2001 annual report, you get that same number for</p> <p>5 the fees and other income --</p> <p>6 A. Right.</p> <p>7 Q. -- in the 2002 report?</p> <p>8 So did the ePlus suite revenues get</p> <p>9 included in the fee and other income category?</p> <p>10 A. I think a portion of them did.</p> <p>11 Q. Okay.</p> <p>12 A. You know, because if you look at this</p> <p>13 report, then you go to 2002, we didn't suddenly jump</p> <p>14 up 7 million dollars just in software, so there was</p> <p>15 other stuff that was lumped into that.</p> <p>16 Q. What else contributed to that increase?</p> <p>17 A. I was looking to see in the report if we</p> <p>18 defined what was in the fees and other income</p> <p>19 bucket.</p> <p>20 And I think --</p> <p>21 THE WITNESS: Steve was talking about</p> <p>22 financing.</p> <p>23 MR. STRAPP: Yeah.</p> <p>24 A. I think Steve Mencarini, who you guys are</p> <p>25 speaking to next week, is probably suited to answer</p>	<p>101</p> <p>1 Q. And that's the area that these patents</p> <p>2 involve.</p> <p>3 Correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Lawson was not listed as one of the</p> <p>6 competitors here.</p> <p>7 Correct?</p> <p>8 A. No. It's not meant to be an all-inclusive</p> <p>9 list. It states that.</p> <p>10 Q. Right. But there are some competitors</p> <p>11 listed by name here.</p> <p>12 Right?</p> <p>13 A. There are some, yep.</p> <p>14 Q. How did ePlus decide which companies to</p> <p>15 list by name here?</p> <p>16 A. Well, I think that, you know, going back</p> <p>17 to 2001, you know, these are companies that maybe we</p> <p>18 ran into more often than others at that point in</p> <p>19 time.</p> <p>20 Q. About how many total competitors did ePlus</p> <p>21 have in the procurement software and e-commerce</p> <p>22 market in the 2002 time frame?</p> <p>23 A. I couldn't speculate. There were --</p> <p>24 Q. Dozens?</p> <p>25 A. -- a lot, yeah.</p>	<p>103</p>
<p>1 this particular --</p> <p>2 BY MR. McDONALD:</p> <p>3 Q. All right. Well, let's move on and maybe</p> <p>4 we'll do more with him.</p> <p>5 So for the -- let's go to the 2002 annual</p> <p>6 report then, time frame. Can you turn to -- and</p> <p>7 2002, as I indicated earlier, my understanding is</p> <p>8 from your expert, that's when he sets up the</p> <p>9 hypothetical negotiation between ePlus and Lawson for</p> <p>10 a license agreement under the patents.</p> <p>11 Okay?</p> <p>12 It's 2002.</p> <p>13 A. That's what you had indicated.</p> <p>14 Q. Okay. So if we turn to page 17 of the</p> <p>15 annual report, page 13306.</p> <p>16 A. Okay.</p> <p>17 Q. This page describes ePlus's competition.</p> <p>18 Correct?</p> <p>19 A. It's listing some of the ones that are in</p> <p>20 here, sure.</p> <p>21 Q. Right. And it's talking about competitors</p> <p>22 for its businesses, including procurement software</p> <p>23 and electronic commerce.</p> <p>24 Right?</p> <p>25 A. Correct.</p>	<p>102</p> <p>104</p> <p>1 Q. A hundred?</p> <p>2 A. I don't know if it was quite a hundred,</p> <p>3 but there were quite a bit.</p> <p>4 MR. McDONALD: Okay. Why don't we go</p> <p>5 ahead and take a break now.</p> <p>6 THE WITNESS: Okay.</p> <p>7 THE VIDEOGRAPHER: We're going off the</p> <p>8 record. This ends videotape number 2 in the</p> <p>9 deposition of Kenneth Farber. The time is now 12:17</p> <p>10 PM.</p> <p>11 (Whereupon, at 12:17 p.m., the deposition</p> <p>12 in the above-entitled matter was recessed, to</p> <p>13 reconvene at 1:10 p.m., this same day.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

1 AFTERNOON SESSION 2 (1:10 p.m.) 3 Whereupon, 4 KENNETH GARY FARBER, 5 the witness testifying at the time of recess, having 6 been previously duly sworn, was further examined and 7 testified further as follows: 8 (Lawson Exhibit No. 66 9 was marked for 10 identification.) 11 THE VIDEOGRAPHER: Good afternoon. We're 12 now back on the record. 13 This is the beginning of videotape number 14 3 in the deposition of Kenneth Farber. The time is 15 now 1:10 PM. You may proceed. 16 17 EXAMINATION BY COUNSEL FOR DEFENDANT (RESUMED) 18 BY MR. McDONALD: 19 Q. Mr. Farber, just picking up on a couple 20 things before the break, you've got before you now 21 what's been marked as exhibit 66. It looks like it's 22 got the title, ProcureNet Inc. withdrawal of 23 registration statement on form S 1. 24 Do you see that in the middle of the page? 25 A. Yes.	105 1 Q. So one thousand dollars for the license 2 that Fisher got; is that right? 3 A. Yes. 4 Q. Now, that amount was made as a paidup 5 royalty-free license, so that was the one and only 6 payment they had to make. 7 Right? 8 MR. STRAPP: Objection, calls for 9 speculation. 10 A. I'd have to look. 11 BY MR. McDONALD: 12 Q. Could you turn to 2 pages earlier. 13 MR. STRAPP: I'm going to object that this 14 line of questioning about this document is beyond the 15 scope of the topics. 16 MR. McDONALD: The topics include 17 licenses. 18 MR. STRAPP: The topics are about ePlus's 19 licenses. This isn't ePlus. This is a ProcureNet 20 and Fisher. You're asking a corporate designee ePlus 21 questions about a company that's not ePlus. 22 MR. McDONALD: Category 24 includes 23 efforts or attempts by made ePlus, ProcureNet, and/or 24 Fisher Scientific to license and/or sell the patents, 25 just to be clear on the scope here.	107
1 Q. It's dated November 10, 2000? 2 A. M-hm, yes. 3 Q. Is this the formal withdrawal by 4 ProcureNet of its effort to have an initial public 5 offering in 2000? 6 A. Yes. 7 Q. Then can we return to the exhibit 57, 8 which is the software license agreement between 9 Fisher Scientific and ProcureNet? 10 A. The last one. 11 Q. That's the way it works. 12 A. Okay. 13 Q. Would you turn please to the page numbered 14 5 of that license agreement, which is also 700143. 15 A. 13 -- 16 Q. 143. 17 A. Oh, 143. Okay. Okay. 18 Q. You see in there at the bottom of the 19 page, there's a section 7, fees, cost, and expenses? 20 A. Yes. 21 Q. And under 7.1, what fee did Fisher 22 Scientific pay to ProcureNet or Strategic Computer 23 Services for the license? 24 A. This says -- let's see, consideration of 25 license granted, a thousand dollars.	106 1 BY MR. McDONALD: 2 Q. And I understand, Mr. Farber. I'm just 3 asking you for whatever knowledge ePlus has such as 4 it is and all that, but this is certainly within the 5 topic. 6 Do you have paragraph 2.1 before you? 7 A. Yes. 8 Q. That is the paragraph entitled, grant of 9 license. 10 Correct? 11 A. Yes. 12 Q. Under that, you see where it says the 13 grant in line 3, it's a fully paidup royalty-free 14 nonexclusive and nontransferable license? 15 A. Yes. 16 Q. So is it your understanding just looking 17 at the document anyway as ePlus's spokesperson today 18 that the thousand-dollar payment set forth in section 19 7.1 entitled Fisher to a fully paidup royalty-free 20 license? 21 A. Yes. It doesn't appear out of the norm. 22 Q. This morning, we were talking about that 23 one valuation document going back to the May 2001 24 acquisition. 25 Are you aware of any other documents that	108

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

1 are done for business purposes by ePlus or ProcureNet 2 apart from any litigation now that relate to efforts 3 to value the patents involved in this lawsuit? 4 A. Not that I'm aware of. 5 Q. Are you aware of any license agreements 6 related to the patents-in-suit other than licenses 7 entered with parties involved in litigation and other 8 than the ones we've been talking about today? 9 A. No, I'm not. 10 Q. Can you please pull back out the S 1 11 filing of ProcureNet, exhibit 63. 12 A. Certainly. 13 Q. And turn to page 448839, please. 14 A. Okay. 15 Q. That page has an exhibit index. 16 Correct? 17 A. Yes. 18 Q. Now, do you see an entry there, 10.10? 19 A. Yes. 20 Q. That one is, quote, patent license 21 agreement dated as of July 5, 2000, between 22 ProcureNet and Fisher, quote. 23 Correct? 24 A. Yes. 25 Q. Now, the agreement we looked at earlier	109 1 that we've made an effort not -- we've spoken with 2 personnel at ePlus to try to determine if they have 3 this document in possession, custody, or control. We 4 searched internal databases both at ePlus and our own 5 databases from previous litigations and have not been 6 able to find the document. 7 MR. McDONALD: Have you contacted the 8 counsel on the IPO that's listed on the front here, 9 either Paul Hastings or Debevoise & Plimpton? 10 MR. STRAPP: I'm not aware of that. I'm 11 not aware yes or no. 12 MR. McDONALD: Well, I think that's within 13 the scope or control of ePlus here to make that 14 inquiry of counsel, and sometimes lawyers keep things 15 for a while, so maybe you can get it that way. 16 Would you do that, Michael? 17 MR. STRAPP: Sure. 18 MR. McDONALD: Okay. Thank you. 19 BY MR. McDONALD: 20 Q. Do you as you sit here today have any 21 recollection of what the terms were of that July 5th, 22 2000, license agreement? 23 A. No, I don't specifically, no. 24 Q. Are you aware of any industry reports from 25 companies such as Gardner, Forrester, or Aberdeen	111
1 looks like it's actually that April 14th, '99, 2 agreement that's at 10.9 here, correct, exhibit 57 is 3 actually 10.9? 4 A. Yes. 5 Q. Are you aware of any efforts to find a 6 copy of the patent license agreement dated July 5, 7 2000, between ProcureNet and Fisher listed here as 8 10.10? 9 A. I'm not -- I'm not -- am I aware of -- 10 Q. -- of efforts to find a copy of that 11 agreement? 12 Because it has not been produced to me in 13 this case. 14 A. Oh, I see. No, I'm not aware of specific 15 efforts. 16 Q. Has anybody asked you for a copy? 17 A. Not personally, no. 18 Q. Okay. I'm going to make the request and 19 obviously you'll consult with counsel later, but I'm 20 going to make the request right now on the record for 21 you to do whatever you can to find a copy of that 22 document. I think both parties have gone to SEC 23 records and so on, weren't able to find it there, and 24 also not any other -- 25 MR. STRAPP: I'll represent on the record	110 1 that talk about Lawson? 2 A. Sure. 3 Q. Are you aware of a report from 2002 4 regarding Lawson introducing a new version of its 5 e-procurement-related products? 6 A. I couldn't tell you the date. I mean, I 7 know that Lawson has -- I don't know the exact date 8 that they announced it. I know there's been 9 subsequent announcements related to the procurement 10 offerings. 11 Q. What is your understanding as to when 12 Lawson introduced its procurement-related systems? 13 A. It was in the early 2000s, as I recall. 14 Q. And what is your understanding of the 15 functionality of that system as it was introduced in 16 the early 2000s? 17 A. Well, I didn't have access to detailed 18 information about the system other than perhaps with 19 what the announcement said or what others may have 20 reported on it or any press that maybe available in 21 the public domain, but I wouldn't have access to the 22 system, you know, to do a detailed analysis at that 23 time I don't think. 24 Q. Do any of these industry reports provide 25 any details as to what Lawson systems did?	112

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

1 A. They may. I just don't have recollection 2 back to 2002. That was quite a while ago. 3 Q. Do you have any understanding as to which 4 if any of these industry reports are being relied 5 upon by any of the experts testifying on behalf of 6 ePlus in this case that relate to Lawson systems? 7 A. I don't have personal knowledge of that, 8 no. 9 Q. Did anybody ask you about when you became 10 aware of any industry reports relating to Lawson in 11 the context of preparing these expert reports? 12 A. No, not that I remember. 13 Q. Has ePlus licensed any patents other than 14 the 3 patents involved in this suit to other 15 companies apart from litigation? 16 A. Sure, sure. Not that I recall or have 17 knowledge of. 18 Q. Has ePlus taken licenses from any other 19 parties apart from litigation? 20 A. As it relates to patents? 21 Q. As it relates to patents, yes. 22 A. Outside of litigation, again, I don't 23 believe so. 24 Q. Were you involved in the settlement with 25 SciQuest?	113 1 resolve the patent claims. 2 A. I think more appropriately stated, I think 3 that there was an agreement made, and we -- you know, 4 based on the terms that the principals of both 5 companies agreed to in terms of the dollar amounts, 6 you know, I then became engaged to finalize that in 7 the form of a settlement agreement, license agreement 8 if you will. 9 Q. Well, I think my question related, though, 10 when I asked whether you had all the information at 11 ePlus that you think you needed to decide to enter 12 that agreement, I think you said you didn't think so, 13 but I was asking, did somebody else decide you had 14 enough information and basically tell you to go ahead 15 and make the deal? 16 A. Well, I think our CEO believed he felt 17 comfortable with the conversation that he had with 18 SciQuest and asked me to go ahead and draw up the 19 paperwork for the deal. 20 Q. So from the -- the CEO is Mr. Norton? 21 A. That's correct. 22 Q. From Mr. Norton's standpoint your 23 understanding it terms of what he communicated to you 24 was that he had gathered enough information that he 25 was ready to make that decision to enter the
114 1 A. To some degree, yes. 2 Q. Who was the primary negotiator from a 3 business or nonlawyer standpoint for ePlus regarding 4 the SciQuest agreement? 5 A. Well, I was directly responsible for the 6 negotiation of the final agreement. 7 Q. Was there -- did ePlus enter that 8 agreement with SciQuest voluntarily? 9 A. Yes. 10 Q. Was it your decision to enter that 11 agreement? 12 A. Well, the agreement was something that was 13 in general terms agreed upon by our CEO along with 14 the CEO and one of the board members I believe from 15 SciQuest. 16 Q. Did the decision makers at ePlus have all 17 the information that they think they needed to make a 18 decision as to whether to enter that agreement with 19 SciQuest? 20 A. I personally didn't believe we did, no. 21 Q. Did somebody else at ePlus believe you 22 did? 23 A. Believe that we had the necessary 24 information -- 25 Q. -- to enter an agreement with SciQuest to	116 1 agreement? 2 A. I wouldn't say that he stated that he had 3 enough information. He stated that, we're going to 4 settle for this amount, and I asked him, what about 5 the, you know, other elements of things we would 6 normally expect before entering into an agreement, 7 and he expressed that he agreed to a settlement with 8 them, so let's go ahead and move forward at this 9 juncture. It was early in the process. 10 Q. So you had some concerns about entering 11 into that agreement that early in the process? 12 A. I stated some concerns about the dollar 13 amount, not knowing their financials in as much 14 detail as I had on others. 15 Q. What did you not know about the financial 16 details for SciQuest? 17 A. Any of them. 18 Q. Did you get any revenue figures or 19 anything for SciQuest? 20 A. No, I did not. 21 Q. Did you have some estimates as to what 22 SciQuest's revenues were? 23 A. No. 24 Q. Did Mr. Norton indicate that he had had 25 conversations with SciQuest where he had gotten some

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

	<p>1 indication of the revenues?</p> <p>2 A. Not that I recall that.</p> <p>3 Q. Did you review any industry reports that</p> <p>4 would be an indication of what SciQuest's revenues</p> <p>5 were?</p> <p>6 A. No, not in preparation in connection with</p> <p>7 the agreement.</p> <p>8 Q. Did you review any industry reports</p> <p>9 outside of preparing the agreement that indicated</p> <p>10 what SciQuest's revenues were?</p> <p>11 A. Well, I regularly read analysts' reports</p> <p>12 or news items that come across my desk. I don't know</p> <p>13 that I saw anything specific that I can recall to the</p> <p>14 revenue numbers on an annual basis.</p> <p>15 Q. During the negotiations with SciQuest, did</p> <p>16 you make an effort to look through those industry</p> <p>17 reports to see if you could find revenue information</p> <p>18 as to SciQuest?</p> <p>19 A. No.</p> <p>20 Q. Why not?</p> <p>21 A. Because again it was very early in the</p> <p>22 process. We knew that we would be expending a</p> <p>23 significant amount of dollars as it relates to the</p> <p>24 case, and this was I think within the first month or</p> <p>25 2 of when the litigation started, and we would not be</p>
	<p>117</p> <p>1 A. Yes.</p> <p>2 Q. Were you also involved with the</p> <p>3 negotiations with Perfect Commerce?</p> <p>4 A. Yes.</p> <p>5 Q. Did ePlus voluntarily enter that</p> <p>6 agreement?</p> <p>7 A. Yes, we did.</p> <p>8 Q. Did ePlus have all the information it</p> <p>9 thought it needed to have in order to make that</p> <p>10 decision to reach an agreement with Perfect Commerce</p> <p>11 about the patent issues?</p> <p>12 A. Yes, we did.</p> <p>13 Q. For Verian and Perfect Commerce, did you</p> <p>14 have information about their revenues?</p> <p>15 A. Yes, I did.</p> <p>16 MR. McDONALD: Would you mark this as the</p> <p>17 next exhibit, please.</p> <p>18 (Lawson Exhibit No. 67</p> <p>19 was marked for</p> <p>20 identification.)</p> <p>21 BY MR. McDONALD:</p> <p>22 Q. Mr. Farber, do you recognize what has been</p> <p>23 marked as exhibit 67?</p> <p>24 A. Not particularly.</p> <p>25 Q. Do you ever -- or do you have some</p> <p>118</p> <p>1 expending a significant amount of money and hadn't at</p> <p>2 that point in time.</p> <p>3 And like I said, the -- our CEO as well as</p> <p>4 the CEO of SciQuest and a board member got together</p> <p>5 on a golf course, came to terms, and I followed the</p> <p>6 direction of our CEO.</p> <p>7 Q. Is SciQuest publicly traded or private?</p> <p>8 A. Today its private.</p> <p>9 Q. In the past, has it been public?</p> <p>10 A. It has been public in the past.</p> <p>11 Q. What did it go from public to private?</p> <p>12 A. I want to say within the last 10 years.</p> <p>13 Q. Did you look any of the information about</p> <p>14 SciQuest's revenues or business based on information</p> <p>15 available from when the company was public?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Were you involved in the negotiations of</p> <p>18 Verian?</p> <p>19 A. I was.</p> <p>20 Q. Did ePlus voluntarily enter into an</p> <p>21 agreement with Verian to resolve the patent issues?</p> <p>22 A. Yes.</p> <p>23 Q. Did ePlus have all the information it felt</p> <p>24 it needed to have in order to make that decision to</p> <p>25 enter an agreement with Verian?</p> <p>120</p> <p>1 familiarity with the materials available on ePlus's</p> <p>2 Website regarding its products and services?</p> <p>3 A. Sure, yes.</p> <p>4 Q. Do you have some role in approving those</p> <p>5 or supervising the people who approve the materials</p> <p>6 on the Website?</p> <p>7 A. I supervise the people that prepare the</p> <p>8 information. And then it goes through an internal</p> <p>9 approval process before being posted.</p> <p>10 Q. What is your understanding as to what</p> <p>11 exhibit 67 relates to?</p> <p>12 A. It looks like it would be something that</p> <p>13 came from our Website under the section of content</p> <p>14 management. And it looks as though it's referring to</p> <p>15 a tool that we have called, Content Plus Advanced.</p> <p>16 Q. What is Content Plus Advanced?</p> <p>17 A. Content Plus Advanced is a software</p> <p>18 product that's sold as an enterprise system, which</p> <p>19 means that a client would install that behind their</p> <p>20 firewall to manage and maintain advanced levels of</p> <p>21 content.</p> <p>22 Q. When you say, content, can you give me an</p> <p>23 idea what sort of content you're talking about?</p> <p>24 A. Well, it could be content for</p> <p>25 commerce-related engines. It could be content for</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 inventory management systems. It could be content 2 for legacy inventory management systems. It could be 3 content for databases that contain maintenance, 4 repair, and operations data. So that's kind of 5 listed on the left side in terms of the data sources 6 here on this diagram, is what I'm referring to.</p> <p>7 Q. Oh, under the heading, data sources?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. So when you mentioned commerce, 10 would that be the ones that correspond to supplier 11 catalogs?</p> <p>12 A. And buy-side applications, which is the 13 last one.</p> <p>14 Q. Can you explain in a little more detail 15 what buy-side applications are?</p> <p>16 A. At a very high level, buy-side application 17 is an application where any company is using their 18 database to look to determine who they're doing 19 business with, who their contracts are with, so it 20 could be with a procurement system or it could just 21 be a database that's connected to other applications 22 that they use to search their repository of suppliers 23 and what SKUs they purchase from those suppliers?</p> <p>24 Q. Okay. So buy-side applications that could 25 include information about individual products to</p>	<p>121</p> <p>1 Q. So if the customer wants to have a list of 2 vendors with this particular selected items in there, 3 would that be considered buy-side applications, 4 supplier catalogs, or both?</p> <p>5 A. It could be one, the other, or both 6 actually.</p> <p>7 Q. Either or both?</p> <p>8 A. Yes, that's correct.</p> <p>9 Q. All right. The legacy systems, does that 10 involve commerce-related data, or is that something 11 else?</p> <p>12 A. It -- legacy-related systems could be 13 accounting systems. They could be maintenance, 14 repair, and operation systems. They could be old 15 inventory systems, very old ERP systems. They could 16 be just databases with a bunch of old parts and SKUs, 17 S-K-U.</p> <p>18 Q. You said it could be old inventory or very 19 old ERP. I was curious why you called ERP very old.</p> <p>20 A. Well, legacy -- no, not -- ERP could be 21 new or old. When I say, legacy, though, legacy tends 22 to refer to something that's old or that's been 23 sitting in the enterprise for a long time.</p> <p>24 Q. Okay. So there's no reason -- ERP could 25 be very old or old or not so old?</p>
<p>1 purchase?</p> <p>2 A. It could.</p> <p>3 Q. It also could include contract information 4 from suppliers?</p> <p>5 A. It could, sure.</p> <p>6 Q. So how would the item information in the 7 buy-side applications be different from the item 8 information in supplier catalogs?</p> <p>9 A. Well, they don't have to necessarily have 10 item-level information related to them. The 11 supplier -- the data sources in the supplier catalog 12 usually have item-level information associated with 13 them.</p> <p>14 Q. So the buy-side applications may or may 15 not have item information?</p> <p>16 A. That's correct.</p> <p>17 Q. Supplier catalogs are pretty much always 18 going to have item information?</p> <p>19 A. I don't want to say, always. I mean, 20 there may be some clients that elect to just their 21 suppliers as a -- what's referred to as a vendor 22 master. They may have 12,000 suppliers they deal 23 with and they may want to say supplier A is capable 24 of selling us commodities, you know, B, C, and D, but 25 not necessarily in a list by part number.</p>	<p>122</p> <p>124</p> <p>1 A. And there's new ERP systems too, so --</p> <p>2 Q. ERP stands for -- is it enterprise 3 resource planning?</p> <p>4 A. Enterprise resource planning, yeah.</p> <p>5 Q. And then another item listed under data 6 sources here on exhibit 67, I think the only one we 7 have not talked about in detail is called, enterprise 8 applications.</p> <p>9 A. M-hm.</p> <p>10 Q. Can you explain what that is?</p> <p>11 A. Well, again, that could be a multitude of 12 systems that somebody has either internally developed 13 to keep information in, it could be as we refer to 14 the newer ERP systems, the newer accounting systems.</p> <p>15 Q. So this Content Plus Advanced product, 16 that provides a way to manage and maintain data that 17 falls under this list of data sources?</p> <p>18 A. That's correct. It does other things that 19 aren't listed here.</p> <p>20 Q. Is that technology a technology you 21 considered to be covered by the patents involved in 22 this lawsuit or not?</p> <p>23 A. There is -- I think the -- I don't know 24 what kind of conclusion to make on that question. I 25 think there's 3 patents-in-suit.</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 Q. That's right. The electronic sourcing 2 system, I think is -- 3 A. Right. 4 Q. -- the title of all of them more or less. 5 MR. STRAPP: Let me just object before you 6 answer as beyond the scope of the topics at issue 7 today. 8 MR. McDONALD: We've got -- category 31 is 9 content and purpose of any advertising or marketing 10 materials -- 11 MR. STRAPP: Right. 12 MR. McDONALD: -- created by ePlus 13 relating to any ePlus electronic procurement product 14 or service. I think it falls within that. 15 MR. STRAPP: Okay. Well, I'll make the 16 objection. 17 A. It's one of the tools that we use in our 18 back-office just by example to provide services to 19 some our customers when we need to to use it. 20 BY MR. McDONALD: 21 Q. You know, you see here on exhibit 67 up 22 near the top, there's some boldface language where it 23 says, quote: Content Plus Advanced, a patented 24 comprehensive system for the management, syndication, 25 and analysis of all product content, quote.</p>	<p>125</p> <p>1 Q. In the second paragraph under the 2 boldface, it refers to sell-side order entry systems. 3 Do you see that reference? 4 A. Yes. 5 Q. We talked before about buy-side 6 application. I don't think we talked about 7 sell-side. 8 Can you tell me what a sell-side order 9 entry system is? 10 A. Sure. So there are companies that may 11 want to sell their goods and services, so they can 12 use this tool for that as well. 13 Q. All right. Then it refers to, 14 customer-facing catalogs. 15 Do you see that? 16 A. Yes, I do. 17 Q. What are customer-facing catalogs? 18 A. Those catalogs that are built that a 19 consumer or a customer -- that you would expose to a 20 consumer or a customer. 21 Q. So this would again be from a sell side 22 that somebody is selling products to a customer so 23 they want to generate content that will be facing the 24 customers? 25 A. Right. It could also be inferred that a</p>	<p>127</p>
<p>1 Do you see that? 2 A. I do. 3 Q. I'm trying to get an understanding, when 4 there's a reference there to patented, does that 5 refer to the patents, the 3 patents involved in this 6 case or some other patents? 7 A. No. There's other patents associated with 8 this tool that are referred to as the information 9 translation protocol patents. 10 Q. All right. So it's not the patents 11 involved in this suit, then, that are under this 12 Content Plus Advanced product line? 13 A. The patents that are associated with this 14 product are not within the initial complaint of the 15 '516, '172, and the other one. 16 Q. You say, the initial complaint. 17 Does that suggest we have a next chapter 18 to this story? 19 A. No, I hope not. I certainly hope not. 20 Q. All right. 21 A. Bad choice of words there, isn't it? 22 Wow. That's why I'm not a lawyer. 23 Q. If we can go back to exhibit 67 for just a 24 moment. 25 A. Sure.</p>	<p>126</p> <p>128</p> <p>1 customer could be within a very large corporation, 2 they have multiple departments and multiple 3 subsidiaries, and those are their customers, because 4 a lot of larger companies have what they called 5 service departments that service other operating 6 units, so they may consider those operating units 7 their customers as well. 8 Q. Okay. It refers to "parametrically 9 searchable content" in the next line. 10 Do you see that? 11 A. Yes. 12 Q. What is parametrically searchable content? 13 A. It's an advanced method of searching based 14 on the attributes of an item. 15 Q. Did the patents-in-suit involve 16 parametrically searchable content or not? 17 A. I don't believe the patents-in-suit are 18 related to parametric searching. In other words, the 19 patents aren't for parametric searching. 20 Q. Can you give me some example of what a 21 parametric search might look like? 22 I'm having a little trouble getting an 23 understanding of what that means. 24 A. Parametric searching is a means by which 25 you may ask the system to respond -- to bring back to</p>	<p>126</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 you all items that are made by Philips and that are 2 light bulbs and that are all 60-watt, and if you 3 think of a light bulb, you'll have a lot of 4 attributes associated with a light bulb, the 5 filament, the length of the -- you know, how long the 6 filament will last, is it a 3-hour light bulb or is 7 it a 500-hour light bulb. 8 But when somebody goes into parametric 9 searching, they actually drill and query the system 10 to find very precise information, I'm looking for 11 Philips light bulb, I'm looking for something that's 12 going to last 500 hours that can operate in an 13 environment that's exposed to let's say a lot of 14 water or humidity or something of that nature. And 15 there's a dropdown that has all the attributes 16 associated with a light bulb or whatever one can 17 think about a light bulb, and they would narrow their 18 field if you will to get specifically that item. 19 Q. So for example, if the 500 hours of life 20 you referred to, could you do a search with 21 parametric searching for all light bulbs that lasted 22 at least 500 hours that would include the ones that 23 last a thousand hours or more? 24 A. No, no. You're specifically saying to the 25 system in a dropdown, there may be something that</p>	<p>129</p> <p>1 Right? 2 A. Correct. 3 Q. And then on the left, there's an arrow 4 with the Content Plus Advanced on it. 5 Right? 6 A. Yes. 7 Q. And Content Plus Advanced, that's what we 8 were just talking about, exhibit 67. 9 Right? 10 A. Correct. 11 Q. Now, of these circles, do any of them or 12 any combination of them use the technology that's 13 involved with the patents-in-suit? 14 A. I think that -- well, the Catalog Plus or 15 the catalog engine is what sits in the procurement 16 product, so you're actually searching the catalog to 17 find items from one or more suppliers. 18 Q. Okay. So does that mean that the big 19 circle Catalog Plus -- is that where you would find 20 where in the ePlus system it uses the patented 21 technology that's involved in this lawsuit? 22 A. Yeah. I believe that it's the catalog 23 that you're searching. Searching is one of the 24 components of the claim, so the catalog would be a 25 component of that.</p>
<p>130</p> <p>1 says, hours of life, and it will say, 50, 100, 500, 2 600, a thousand, et cetera. 3 Q. All right. 4 MR. McDONALD: Mark this as the next 5 exhibit, please. 6 (Lawson Exhibit No. 68 7 Was marked for 8 identification.) 9 BY MR. McDONALD: 10 Q. Mr. Farber, you've been handed what was 11 marked exhibit 68. 12 Do you recognize this document? 13 A. Again, it looks like something that had 14 come from our Website, and another component called 15 Catalog Plus. 16 Q. So you've got a picture here in exhibit 68 17 under the heading, product information management. 18 Right? 19 A. Yes. 20 Q. It's got 3 circles and then one more big 21 circle. 22 Right? 23 A. Correct. 24 Q. The big circle has got the label, Catalog 25 Plus.</p>	<p>132</p> <p>1 Q. So can you explain to me what's being 2 depicted in this picture with the circles and the 3 arrows? 4 A. I think this is one of the things that we 5 provide to a customer. We're saying that there's a 6 lot of different ways that one can create and 7 populate a catalog. You know, it could be done 8 through our Content Plus Advanced solution, which 9 puts the tool in the hands of our customers. It 10 could be done as a hosted content management 11 solution, supplier portal, which we can manage or a 12 customer can manage on their own to load data into 13 the catalog. Or it could be, you know, through 14 services that we provide to do it on behalf of our 15 customers. 16 So those are the 3 methods by which we're 17 describing at a very high level how data can be 18 populated into a catalog. 19 Q. So we've got the 3 arrows coming into 20 Catalog Plus here, that would indicate the flow of 21 information about catalog items, all the options 22 there? 23 A. It would -- those are the 3 ways by which 24 catalog, slash, supplier information and SKUs are 25 loaded into system.</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 Q. So on the left with the Content Plus</p> <p>2 Advanced arrow coming from the circle enterprise</p> <p>3 content management, that's where one of your customer</p> <p>4 would buy the Content Plus Advanced system and in</p> <p>5 effect create their own content to load up into</p> <p>6 Catalog Plus?</p> <p>7 A. That's one of the ways that Content Plus</p> <p>8 Advanced can be used, yes.</p> <p>9 Q. Okay. Are there other ways Content Plus</p> <p>10 Advanced can be used to create catalog information</p> <p>11 for the Catalog Plus system?</p> <p>12 A. No. Content Plus Advanced can be used for</p> <p>13 other means other than creating catalogs.</p> <p>14 Q. Okay. Right. Then the upper middle</p> <p>15 circle is, hosted content management, with an arrow</p> <p>16 saying, supplier portal.</p> <p>17 A. Yes.</p> <p>18 Q. I think -- just trying match that up to</p> <p>19 the options that you've said earlier.</p> <p>20 Can you tell me which of the options is</p> <p>21 being depicted there in terms of how you get catalog</p> <p>22 information into the Catalog Plus system?</p> <p>23 A. What do you mean, which of the options?</p> <p>24 Q. Well, you talked about, you know, the</p> <p>25 customer can do it themselves or ePlus can do it, et</p>	<p>1 Q. Okay. So that hosted content management,</p> <p>2 is that an option where customers can hire ePlus to</p> <p>3 have servers, computers, data storage to host item</p> <p>4 information, catalog information?</p> <p>5 A. Yeah. It's available to them if they want</p> <p>6 us to host the information, or they can have their</p> <p>7 catalog sitting, you know, within their premise.</p> <p>8 Q. Do you have a sense for generally what</p> <p>9 percentage of ePlus's customers that use the Catalog</p> <p>10 Plus system will ask or have asked ePlus to host the</p> <p>11 data as opposed to hosting it themselves?</p> <p>12 A. I think -- I guess -- let me just make</p> <p>13 sure I understand the question: How many customers</p> <p>14 are hosting their data versus not.</p> <p>15 Q. Versus asking ePlus to host the data for</p> <p>16 them.</p> <p>17 A. Right.</p> <p>18 Q. As a percentage ballpark.</p> <p>19 A. Today it's probably -- you know, I'm</p> <p>20 speculating, but I would say approximately 60 percent</p> <p>21 have asked of late to have their data hosted. The</p> <p>22 majority of them are managing that data themselves.</p> <p>23 And then the remainder, again, would be behind their</p> <p>24 firewall within their data centers.</p> <p>25 Q. So within this circle of hosted content</p>
<p>1 cetera. I can't remember what exactly what all --</p> <p>2 A. Again the customer can completely do this</p> <p>3 themselves or we could do it for them, or it could be a</p> <p>4 combination. We provide some services. They do some</p> <p>5 of the work themselves.</p> <p>6 Q. This term supplier portal, it kind of</p> <p>7 sounds to me like that's maybe some routing to or</p> <p>8 from an actual third-party supplier?</p> <p>9 Is that right, or not?</p> <p>10 A. We call it the supplier portal. I mean,</p> <p>11 we're dealing with supplier information, so it's a</p> <p>12 portal to deal with that information.</p> <p>13 Q. Does this picture show any -- does this --</p> <p>14 I'll withdraw that.</p> <p>15 In exhibit 68 here, does this picture</p> <p>16 depict in any part of it an option where customers</p> <p>17 can punch out onto the Internet and find catalogs of</p> <p>18 retailers or third-party suppliers?</p> <p>19 A. No. That's more as it relates to</p> <p>20 information that we have in I think more advanced</p> <p>21 documentation about Catalog Plus and Procure Plus,</p> <p>22 not on this particular. This is a very high-level</p> <p>23 Web page about taking information in from suppliers</p> <p>24 and putting it into a resident catalog. It's not</p> <p>25 intended to talk about external catalogs.</p>	<p>1 management, you're saying that's about 60 percent of</p> <p>2 your customers would be in that area?</p> <p>3 A. I think so. I'm speculating, but think</p> <p>4 that's probably fair.</p> <p>5 Q. And of that 60 percent, more than half of</p> <p>6 the customer does their own hosting?</p> <p>7 A. Of the 60 percent?</p> <p>8 The majority of them are -- I'm sorry.</p> <p>9 Of the 60 percent you're asking about?</p> <p>10 When you say, do their own hosting, I</p> <p>11 didn't understand the question.</p> <p>12 Q. I thought you divided the hosted content</p> <p>13 management into 2 categories, and if I'm wrong,</p> <p>14 correct me, but I thought either a customer could do</p> <p>15 their own hosting or ePlus could do the hosting for</p> <p>16 them.</p> <p>17 A. Correct.</p> <p>18 Q. So that's what I'm talking about.</p> <p>19 A. Oh, 60 percent of the customers we're</p> <p>20 hosting their data.</p> <p>21 Q. ePlus is hosting their data?</p> <p>22 A. Correct. That's where I was getting</p> <p>23 confused with the question.</p> <p>24 Q. I'm not sure which of us was.</p> <p>25 A. That's right. And then the remaining are</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 themselves.</p> <p>2 Q. Okay. And then with respect to the ePlus</p> <p>3 content services, can you explain what that covers,</p> <p>4 the circle on the right in the drawing?</p> <p>5 A. Sure, sure. So a lot of times, there's</p> <p>6 companies that have -- I shouldn't say, a lot -- on a</p> <p>7 number of occasions, there are companies that have</p> <p>8 either catalogs that are connected to other systems</p> <p>9 like ERP systems as an example that may be doing</p> <p>10 inventory management, or they may have our system in</p> <p>11 place and what they ask of us is to do the services</p> <p>12 for them, interact with their suppliers, manage their</p> <p>13 content, instead of them doing it, translating it</p> <p>14 into different languages if they have an</p> <p>15 international company -- you know, customers.</p> <p>16 So we provide, you know, ad hoc services</p> <p>17 when customers would ask us to do that for them.</p> <p>18 Q. Approximately what percentage of ePlus's</p> <p>19 customers that use the Catalog Plus system hire ePlus</p> <p>20 to provide services of the type you just described?</p> <p>21 A. Very small amount.</p> <p>22 Q. Less than 10 percent?</p> <p>23 A. I would think so.</p> <p>24 Q. So about 60 percent use the -- well, I</p> <p>25 don't want to be confused again here.</p>	<p>137</p> <p>1 Q. Right, the ones that have Catalog Plus.</p> <p>2 A. What percentage of clients that use</p> <p>3 Catalog Plus don't use enterprise content hosted or</p> <p>4 services?</p> <p>5 Q. Right.</p> <p>6 A. Again, a very small percent. I'd have to</p> <p>7 actually go back and look. I don't know that I have</p> <p>8 an answer to that.</p> <p>9 Q. I was hoping everything was going to add</p> <p>10 up to a hundred percent more or less.</p> <p>11 A. Right.</p> <p>12 Q. So you've got about 60 percent with the</p> <p>13 hosted content management --</p> <p>14 A. Right.</p> <p>15 Q. -- less than 10 percent each on the other</p> <p>16 2 --</p> <p>17 A. Right.</p> <p>18 Q. -- enterprise content management, and</p> <p>19 ePlus content services.</p> <p>20 Right?</p> <p>21 A. Yeah. There's a tool that's not</p> <p>22 represented here called the CMT, which is a content</p> <p>23 maintenance tool, so that makes up the other</p> <p>24 difference, the other small percentage, which was an</p> <p>25 old way that we used to provide to customers to</p>
<p>1 With respect to the whole pie of your</p> <p>2 customers that use Catalog Plus, less than 10 percent</p> <p>3 use ePlus content services. About what percentage</p> <p>4 would use the hosted content management that's</p> <p>5 represented here?</p> <p>6 A. It was about 60 percent.</p> <p>7 Q. Okay. That is right. I don't want to get</p> <p>8 it wrong again. And then about what percentage use</p> <p>9 enterprise content management of those that your use</p> <p>10 Catalog Plus system?</p> <p>11 A. I would think that is again less than 10</p> <p>12 percent.</p> <p>13 Q. Are the remainder customers that use</p> <p>14 Catalog Plus but don't use any of those 3 add-on</p> <p>15 services or products?</p> <p>16 A. Correct.</p> <p>17 Q. So you can use Catalog Plus without using</p> <p>18 any of those 3 things shown in exhibit 68?</p> <p>19 A. That's correct.</p> <p>20 Q. So about what percentage of the Catalog</p> <p>21 Plus customers do not use enterprise content</p> <p>22 management or hosted content management or ePlus</p> <p>23 content services?</p> <p>24 A. What percentage of the clients don't use</p> <p>25 any of these?</p>	<p>138</p> <p>139</p> <p>1 upload their data into Catalog Plus.</p> <p>2 Q. Okay. So less than 10 percent would just</p> <p>3 have Catalog Plus with none of those 4 add-ons?</p> <p>4 A. I think that's accurate.</p> <p>5 Q. All right. So about what percentage have</p> <p>6 the content maintenance tool?</p> <p>7 A. Whatever the remaining number is. You got</p> <p>8 60 percent, 70, 80, it's going to be less -- 20 or</p> <p>9 less percent.</p> <p>10 Q. Does the content maintenance tool have a</p> <p>11 name associated with it?</p> <p>12 A. Content maintenance tool. It's actually</p> <p>13 called the Content Plus Content Maintenance Tool.</p> <p>14 Q. Okay. Is there a reason why that one is</p> <p>15 not represented in this particular Web page, exhibit</p> <p>16 68?</p> <p>17 A. We really don't promote it anymore. It</p> <p>18 was an older tool that was there that as we were</p> <p>19 building out some of these other tools, it was a way</p> <p>20 to load content.</p> <p>21 Q. So is it true that the name Content Plus</p> <p>22 Advanced, that kind of indicated that that was the</p> <p>23 next generation product after just Content Plus?</p> <p>24 A. No. It's marketing people thinking that</p> <p>25 there's logic to the names they put on things.</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 Q. Does the Content Plus content maintenance 2 tool -- does that one use the technology that's the 3 subject of the 3 patents in this suit?</p> <p>4 A. Well, it --</p> <p>5 MR. STRAPP: Go ahead.</p> <p>6 A. I was just going to say that it loads the 7 catalog. It's a utility to just load the catalog 8 data.</p> <p>9 BY MR. McDONALD:</p> <p>10 Q. When did that Content Plus utility get 11 developed?</p> <p>12 A. Oh, gosh, 8, 9 years ago or more. I don't 13 know.</p> <p>14 Q. It was developed after ePlus had acquired 15 ProcureNet or not?</p> <p>16 A. No, I think it might have been before, so 17 it was a little longer.</p> <p>18 Q. Was it developed at ProcureNet or at 19 ePlus?</p> <p>20 A. I think it was at ProcureNet.</p> <p>21 Q. Do you know whether or not Lawson provides 22 services that are competitive with the ePlus content 23 services?</p> <p>24 MR. STRAPP: Objection, beyond the scope.</p> <p>25 A. I have -- when you say, services, I think</p>	<p>141</p> <p>1 in Manassas, Virginia, so it's just a bunch of 2 servers and storage, and the application is put up 3 there, and the customers use it. It's their license 4 to it.</p> <p>5 Q. Do you know whether or not Lawson offers 6 hosted content management like that?</p> <p>7 A. I don't know how they do that.</p> <p>8 Q. And the enterprise content management was 9 that Content Plus Advanced product line.</p> <p>10 Correct?</p> <p>11 A. Correct.</p> <p>12 Q. Do you know whether or not Lawson offers 13 some products or services that are competitive 14 specifically with the Content Plus Advanced?</p> <p>15 A. Again, I would be speculating how Lawson 16 creates their catalogs. These are our methods to 17 create catalogs. I don't know that Lawson, you 18 know -- how they're doing it, what utilities they're 19 putting in the hand of their clients or services or 20 what they're doing to create their catalogs.</p> <p>21 MR. McDONALD: Mark that as the next 22 exhibit, please.</p> <p>23 (Lawson Exhibit No. 69 24 was marked for 25 identification.)</p>
<p>142</p> <p>1 you need to define that so I can make sure I'm 2 accurately giving you the correct answer.</p> <p>3 BY MR. McDONALD:</p> <p>4 Q. Well, you described for me earlier what is 5 within the ePlus content services area.</p> <p>6 A. Yes.</p> <p>7 Q. I think you gave some examples like 8 interacting with suppliers, translation services, 9 managing content, I believe, and maybe some other 10 things I don't remember.</p> <p>11 Do you have an understanding one way or 12 the other whether Lawson provides similar services to 13 that, to its customers?</p> <p>14 A. That would just be speculation. I don't 15 know factually what they do in that area.</p> <p>16 Q. All right. With respect to hosted content 17 management, for those -- you said 60 percent of the 18 customers that have hosted content management ask 19 ePlus to do the hosting for them.</p> <p>20 Correct?</p> <p>21 A. Just hosting it rather than them putting 22 it in their data center.</p> <p>23 Q. So it's actually hosted on ePlus-owned 24 memory storage?</p> <p>25 A. Yeah. It's actually in a Verizon center</p>	<p>144</p> <p>1 BY MR. McDONALD:</p> <p>2 Q. Mr. Farber, you have exhibit 69 before 3 you.</p> <p>4 Do you recognize this document?</p> <p>5 A. It looks again like it came off the Web 6 under the category of product information management, 7 and it's in looking to describe what differentiates 8 our offerings.</p> <p>9 Q. Within that category of product 10 information management, I don't know if we actually 11 talked about that, but I guess it's kind of the 12 heading on this exhibit 68 that we were just talking 13 about.</p> <p>14 Can you tell me generally what product 15 information management means?</p> <p>16 A. It's another high-level term for catalog 17 information, product information. You notice at the 18 top level of this page where it says, home, that it 19 says, supply management?</p> <p>20 Q. M-hm.</p> <p>21 A. Again, that's a very generic category, so 22 supply management has a number of disciplines. One 23 of them we refer to as product information 24 management. Supply management could also mean -- you 25 know, have an element called, procurement. It could</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

	<p>145</p> <p>1 be demand forecasting, so we break it down that way, 2 you know, to get more specific about offerings.</p> <p>3 Q. So when exhibit 69 talks about 4 differentiators, what's your understanding as to what 5 that means?</p> <p>6 A. Differentiators?</p> <p>7 Q. Yes.</p> <p>8 A. You know, it really is meant that when 9 somebody is looking at ePlus compared to others, what 10 benefits do we think that you're going to derive by 11 working with ePlus.</p> <p>12 Q. And are these benefits that ePlus doesn't 13 think are available from its competitors?</p> <p>14 A. No, I wouldn't say that.</p> <p>15 Q. When I see the term differentiators, it 16 sounds like, you know, this is how we're different.</p> <p>17 Is that not how to read that?</p> <p>18 A. I think when you talk about 19 differentiators, there's a lot of things that go into 20 it. You can't just look at one item, one sentence 21 and take everything literally and that's going to be 22 that I'm different than you.</p> <p>23 You take every -- the sum of the parts and 24 say, okay, this company, have they been doing it 25 longer than anything else, are their solutions and</p>		147
	<p>146</p> <p>1 people and services adaptive to me as a business, is 2 their technology adaptive to my business, how quickly 3 can they do this for me. There's a lot of different 4 elements that create differentiators.</p> <p>5 Q. What do you think is ePlus's primary 6 differentiator with respect to its catalog-related 7 software systems?</p> <p>8 A. What do I think of the primary 9 differentiators?</p> <p>10 Q. Yes.</p> <p>11 A. I think that there's a multitude of 12 solutions that we offer to clients in the way that 13 they can manage their data. I also think that 14 experience is a differentiator, and then of course we 15 have some of our own technology when we're doing the 16 work, but that's, you know -- that falls into our 17 experience. When the clients are doing it 18 themselves, they're not necessarily exposed to that 19 technology.</p> <p>20 Q. Under the first differentiator, 21 comprehensive offering, do you have an understanding 22 of whether or not Lawson offers the same 23 functionality in any suite of its products as are 24 described here in your product information management 25 suite?</p>		148

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 health care?</p> <p>2 A. They have a repository of information</p> <p>3 through partnerships that are available to customers.</p> <p>4 Q. What partnerships are you aware of that</p> <p>5 Lawson has in this area?</p> <p>6 A. I think the ones that I've seen</p> <p>7 publicized -- there may be others -- a relation with</p> <p>8 SciQuest that has a very extensive catalog of clean</p> <p>9 data for health care. I think another one is GHX or</p> <p>10 GHX. I may be misrepresenting the name probably, but</p> <p>11 again, another area of health care repository.</p> <p>12 So there's a lot of different ways and</p> <p>13 forms that one could be provided through relationship</p> <p>14 or through giving the tools to the customers to</p> <p>15 create that information, whether or not you're doing</p> <p>16 the services for it or not is not material.</p> <p>17 Q. Under the third point here on the</p> <p>18 differentiators, page -- exhibit 69, flexibility is</p> <p>19 the heading.</p> <p>20 Do you see that one?</p> <p>21 A. Yes.</p> <p>22 Q. First sentence: We create aggregated</p> <p>23 supplier catalogs using either buyer or supplier</p> <p>24 data.</p> <p>25 Do you see that?</p>	<p>149</p> <p>1 services that we are providing that don't necessarily</p> <p>2 have anything to do with our litigation or the</p> <p>3 patents-in-suit. This is a separate service offering</p> <p>4 of ePlus. It may or may not have anything to do</p> <p>5 whatsoever with this litigation.</p> <p>6 Q. All right. So it may not be catalogs or</p> <p>7 products even?</p> <p>8 A. Exactly.</p> <p>9 Q. So when it says, ePlus has processed</p> <p>10 millions of items, what are items?</p> <p>11 A. Items could be vendor records, accounting</p> <p>12 records. It could be any form of data.</p> <p>13 Q. There's a reference there to comprehensive</p> <p>14 software technology that supports more than 100</p> <p>15 production sites every day.</p> <p>16 Do you see that?</p> <p>17 A. No.</p> <p>18 Q. Scalability.</p> <p>19 A. Okay.</p> <p>20 Q. The second and third lines of that?</p> <p>21 A. Okay. Sure, sure.</p> <p>22 Q. What are these more than 100 production</p> <p>23 sites?</p> <p>24 What are those?</p> <p>25 A. Those are -- when they talk about</p>	<p>151</p>
<p>1 A. Okay, yes.</p> <p>2 Q. Do you know whether or not Lawson does the</p> <p>3 same thing or not?</p> <p>4 A. I don't know.</p> <p>5 Q. We can also augment this data with our own</p> <p>6 product databases.</p> <p>7 Do you see that next sentence?</p> <p>8 A. I do.</p> <p>9 Q. Do you know whether or not Lawson provides</p> <p>10 that as well?</p> <p>11 A. I think they're augmenting what a client</p> <p>12 has through relationships that they have struck with</p> <p>13 other partners.</p> <p>14 Q. That would be the SciQuest and the GHX</p> <p>15 type of partnerships you're talking about?</p> <p>16 A. As an example.</p> <p>17 Q. Do you think they have other partnerships</p> <p>18 like those?</p> <p>19 A. They may or may not. I don't know.</p> <p>20 Q. The next point, scalability. It says,</p> <p>21 ePlus has processed millions of items.</p> <p>22 Do you know whether or not Lawson has</p> <p>23 processed millions of items?</p> <p>24 A. I don't know. I mean, we're not dealing</p> <p>25 apples and apples. This is specifically talking to</p>	<p>150</p> <p>152</p> <p>1 production sites, they're talking about instances of</p> <p>2 the application, the procurement application or other</p> <p>3 applications that we provide to customers who are</p> <p>4 using the tools. That could be also for their</p> <p>5 back-office. They may have their ERP system</p> <p>6 connected to, you know, one of our systems that</p> <p>7 they've used our data for, so --</p> <p>8 Q. So are production sites customer sites?</p> <p>9 A. You could refer to that I guess, you know,</p> <p>10 make an assumption there on that.</p> <p>11 Q. Approximately how many current customers</p> <p>12 does ePlus have with respect to its catalog products?</p> <p>13 A. Well, there's probably just under a</p> <p>14 hundred in one area and 300 or so in another area of</p> <p>15 business that we do.</p> <p>16 Q. What are the 2 areas that you're talking</p> <p>17 about?</p> <p>18 A. Well, we have one area that's our</p> <p>19 procurement solution.</p> <p>20 Q. Is that the 100 or the 300?</p> <p>21 A. Well, it's part of the 100.</p> <p>22 Q. Okay.</p> <p>23 A. There's another component where people</p> <p>24 again are just licensing our catalogs and have</p> <p>25 nothing to do with procurement.</p>	<p>152</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 Right?</p> <p>2 They're just licensing their tools for</p> <p>3 their own use and their own facility for whatever</p> <p>4 data they want to use it for. That's part of the</p> <p>5 hundred.</p> <p>6 The other, you know, 300 or so are those</p> <p>7 that have catalogs connected that we provide for our</p> <p>8 IT business that have -- it's catalogs prepopulated</p> <p>9 with about 500,000 IT items where people are actually</p> <p>10 doing the purchasing of IT equipment through ePlus.</p> <p>11 Q. When you say, they purchase through ePlus,</p> <p>12 what is ePlus's role in purchasing for those</p> <p>13 customers in that group of 300?</p> <p>14 A. We do the fulfillment of what they're</p> <p>15 purchasing.</p> <p>16 Q. So you actually will place the orders for</p> <p>17 your customers?</p> <p>18 A. That's correct. They select it off the</p> <p>19 catalog, goes into our systems, and, et cetera.</p> <p>20 Q. Do you know whether or not Lawson provides</p> <p>21 fulfillment services like that?</p> <p>22 A. I have -- I don't believe Lawson is a VAR,</p> <p>23 value-added reseller.</p> <p>24 Q. So this goes to the -- kind of the other</p> <p>25 side of the ePlus business from the software where</p>	<p>153</p> <p>1 A. Yes.</p> <p>2 Q. So you have that group of 100 that had the</p> <p>3 procurement solutions.</p> <p>4 Are those about a hundred that use Procure</p> <p>5 Plus?</p> <p>6 A. Yeah.</p> <p>7 Q. Okay.</p> <p>8 MR. McDONALD: Why don't we take a little</p> <p>9 break at this point.</p> <p>10 THE WITNESS: Sure.</p> <p>11 THE VIDEOGRAPHER: We're going off the</p> <p>12 record. This is the end of videotape number 3. The</p> <p>13 time is now 2:13 PM.</p> <p>14 (Recess.)</p> <p>15 THE VIDEOGRAPHER: Going back on the</p> <p>16 record.</p> <p>17 This is the beginning of videotape number</p> <p>18 4 in the deposition of Kenneth Farber. The time is</p> <p>19 now 2:30 PM. You may proceed.</p> <p>20 BY MR. McDONALD:</p> <p>21 Q. Mr. Farber, did you talk at all to the</p> <p>22 damages expert for ePlus, Mr. Mangum, about the</p> <p>23 license agreement with SAP?</p> <p>24 A. I may have.</p> <p>25 Q. Do you remember one way or the other?</p>	<p>155</p>
<p>1 you're a value-added reseller of equipment?</p> <p>2 A. Correct.</p> <p>3 Q. So the technology that uses the patents</p> <p>4 involved in this suit, what brand names does that go</p> <p>5 by at ePlus?</p> <p>6 A. What brand names --</p> <p>7 Q. Right.</p> <p>8 A. -- do the --</p> <p>9 Q. Is it Procure Plus?</p> <p>10 Does that use the technology involved in</p> <p>11 the lawsuit?</p> <p>12 A. Yeah.</p> <p>13 MR. STRAPP: And I'm going to object as</p> <p>14 beyond the scope of the deposition.</p> <p>15 Go ahead.</p> <p>16 A. I'm suspecting that it's probably the</p> <p>17 procurement -- the Procure Plus application that</p> <p>18 we've been referring to, and our catalog tool.</p> <p>19 BY MR. McDONALD:</p> <p>20 Q. Your Catalog Plus or something else?</p> <p>21 A. Well, the repository, the catalog that you</p> <p>22 search from.</p> <p>23 Q. Is that called Catalog Plus?</p> <p>24 A. Yeah.</p> <p>25 Q. I'm trying to just get a noun here.</p>	<p>154</p> <p>1 A. Actually, I don't.</p> <p>2 Q. Did you have any discussions with them</p> <p>3 regarding the continued use by SAP of the infringing</p> <p>4 technology after you settled with SAP?</p> <p>5 A. I think if I recall properly, he did ask</p> <p>6 me some elements of the agreement, the settlement</p> <p>7 agreement and the licensing of the patents.</p> <p>8 Q. Was it your understanding that after SAP</p> <p>9 and ePlus entered their settlement with SAP getting a</p> <p>10 license that SAP continued to use the ePlus patented</p> <p>11 technology on its products?</p> <p>12 A. After they entered into a license</p> <p>13 agreement, they were granted a license to continue to</p> <p>14 use those solutions.</p> <p>15 Q. That was one of the enticements for SAP to</p> <p>16 enter the agreement, right, is that that they could</p> <p>17 continue to use the technology?</p> <p>18 A. I would believe so, certainly.</p> <p>19 Q. Is it your understanding that SAP has</p> <p>20 continued to keep selling products similar to the</p> <p>21 products that were at issue in the lawsuit?</p> <p>22 A. Yes.</p> <p>23 MR. STRAPP: Objection, calls for</p> <p>24 speculation.</p> <p>25 A. Yes, I believe so.</p>	<p>156</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 BY MR. McDONALD:</p> <p>2 Q. What's the basis for that belief?</p> <p>3 A. They're still marketing the solution, and</p> <p>4 we still see them every once in a while.</p> <p>5 Q. Is there a brand name for the SAP product</p> <p>6 that was accused of infringement?</p> <p>7 A. I think it went under a number of</p> <p>8 different names. "SAP buyer" was one of the names</p> <p>9 that they used.</p> <p>10 Q. Do they continue to use the same brand</p> <p>11 names -- did they continue to use the same brand</p> <p>12 names after the license agreement was entered as they</p> <p>13 had before?</p> <p>14 MR. STRAPP: Objection, calls for</p> <p>15 speculation.</p> <p>16 A. I think they might, but I wouldn't know</p> <p>17 for sure. It's not uncommon to change names with new</p> <p>18 generations of solutions.</p> <p>19 BY MR. McDONALD:</p> <p>20 Q. But your understanding is, whatever they</p> <p>21 call them, the solutions they're offering since the</p> <p>22 license agreement was entered were -- are</p> <p>23 substantially the same as they were before the</p> <p>24 license was entered?</p> <p>25 MR. STRAPP: Same objection.</p>	<p>157</p> <p>1 unrequested information.</p> <p>2 Q. Through that process mostly with emails,</p> <p>3 is that how typically have gotten information about</p> <p>4 SAP or at least references to sites on the Internet</p> <p>5 or whatever it is that you go look at?</p> <p>6 A. Yeah. There's some things that may come</p> <p>7 internally. There's other things externally. I may</p> <p>8 be reading an article on one subject and then I see,</p> <p>9 oh, SAP or some other company announces another</p> <p>10 version of their product XYZ, you know, within the</p> <p>11 same string of links and topics that are addressed in</p> <p>12 these bulletins.</p> <p>13 Q. So it's based on that accumulation of</p> <p>14 information that you believe SAP continues to sell</p> <p>15 products with similar functionalities since the</p> <p>16 license agreement?</p> <p>17 A. Yeah, a combination of sources I think</p> <p>18 would lead me to that belief.</p> <p>19 Q. Have you looked at the SAP license</p> <p>20 agreement recently?</p> <p>21 A. Within the past year or so?</p> <p>22 I don't recall actually sitting down and</p> <p>23 going through the agreements since the execution of</p> <p>24 the agreement.</p> <p>25 MR. McDONALD: Would you mark this as the</p>
<p>1 A. To the best of my knowledge, I don't have</p> <p>2 any information that would say otherwise.</p> <p>3 BY MR. McDONALD:</p> <p>4 Q. Do you get information from ePlus</p> <p>5 employees involved with marketing products regarding</p> <p>6 SAP as competition?</p> <p>7 A. From time to time.</p> <p>8 Q. Is that how you've gotten most of your</p> <p>9 more recent information about what SAP is doing?</p> <p>10 A. No. There's been some recent analysts or</p> <p>11 blogs and other forms of media available on the Web</p> <p>12 related to their products and solutions.</p> <p>13 Q. And you've reviewed those Web materials?</p> <p>14 A. At times. I mean, they come across my</p> <p>15 screen as notifications from all these different</p> <p>16 services, and they'll talk about a new release of</p> <p>17 their procurement solution or their accounting</p> <p>18 solution or their demand planning solution.</p> <p>19 Q. To you specifically get alerts for SAP?</p> <p>20 A. No. I don't have alerts set.</p> <p>21 Unfortunately, my name is on a lot of lists, and</p> <p>22 people just send me a lot of stuff, and I try to weed</p> <p>23 through that stuff as best I can.</p> <p>24 Q. Are these ePlus employees mostly?</p> <p>25 A. No. It's outside, unsolicited,</p>	<p>158</p> <p>1 next exhibit, please.</p> <p>2 (Lawson Exhibit No. 70)</p> <p>3 was marked for</p> <p>4 identification.)</p> <p>5 BY MR. McDONALD:</p> <p>6 Q. Mr. Farber, you've been handed exhibit 70,</p> <p>7 Lawson 70.</p> <p>8 Is this the 2006 patent license and</p> <p>9 settlement agreement between the SAP companies and</p> <p>10 ePlus Inc.?</p> <p>11 A. It is.</p> <p>12 Q. This agreement includes a license to SAP</p> <p>13 for the patents involved in this lawsuit.</p> <p>14 Correct?</p> <p>15 A. Correct.</p> <p>16 Q. Those are all listed at among others on</p> <p>17 page 19 of this document number 940795?</p> <p>18 A. Correct.</p> <p>19 Q. This agreement was executed around</p> <p>20 December of '06; is that right?</p> <p>21 A. Let's see -- well, this doesn't have a</p> <p>22 signature block on it, does it?</p> <p>23 Q. At page 14, 940790, it's got ePlus's CEO's</p> <p>24 signature, Phillip Norton.</p> <p>25 Right?</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 A. Okay. So within a day or so of that, it 2 was finalized, yes. 3 Q. Day or so of December 11, 2006? 4 Can you say yes or no? 5 A. Yes. Sorry. 6 Q. Thank you. 7 The license that ePlus granted to SAP 8 under the patents-in-suit does not require SAP to 9 mark the patent numbers for the patent-in-suit, does 10 it? 11 A. That's correct. 12 Q. So is it your understanding that SAP does 13 not mark any of the patent numbers involved in this 14 case? 15 MR. STRAPP: Objection, calls for 16 speculation. 17 A. I don't know what their marking -- you 18 know, what if anything they mark this agreement. As 19 you stated, it is correct, this agreement does not 20 have a requirement of marking. 21 BY MR. McDONALD: 22 Q. And there is no other agreement that 23 requires SAP to mark the patent numbers for the 24 patents-in-suit. 25 Correct?</p>	<p>161</p> <p>1 exhibit 71 as the ePlus 10-K annual report for the 2 year ending March 31, 2001? 3 A. That's certainly what it's titled. I 4 don't have any reason to believe otherwise. 5 Q. It says it was filed June 29th, 2001, 6 correct, on the first page? 7 A. It does, yes. 8 Q. At that time, were you working for ePlus 9 Inc.? 10 A. I believe I was. 11 Q. Did you have any role in putting together 12 this 10-K report? 13 A. No, I did not. 14 Q. Could turn to the page 139461. 15 A. Yes. 16 Q. You see a heading there the middle of the 17 page there, research and development? 18 A. I do. 19 Q. In the first sentence it says, quote, to 20 date, the majority of our software has been acquired 21 from third-party vendors, and some development has 22 been outsourced to third-party software companies, 23 quote. 24 Do you see that sentence? 25 A. I do.</p>
<p>1 A. That's correct. 2 Q. Is there a reason why ePlus did not 3 require SAP to mark the patent numbers? 4 A. Yes. 5 Q. What's the reason? 6 A. Well, the primary reason is that after a 7 trial and then during negotiation of the settlement 8 agreement, SAP was beyond belligerent over the fact 9 that they don't do any markings and would not accept 10 that provision. So we had a decision to make, do we 11 put this behind us and settle for the 17 and a half 12 million dollars and, you know, just be done with it 13 at this point, and deferred to counsel on advice on 14 what to do in that regard, and they said, move on. 15 Q. Were there any other reasons marking was 16 not required in the SAP license? 17 A. Other than their absolute definitive 18 objection to it, no, not that I'm aware of. 19 MR. McDONALD: Would you mark that as the 20 next exhibit, please. 21 (Lawson Exhibit No. 71 22 was marked for 23 identification.) 24 BY MR. McDONALD: 25 Q. Mr. Farber, do you recognize this document</p>	<p>162</p> <p>164</p> <p>1 Q. What third-party vendors had provided 2 ePlus the majority of its software as of 2001? 3 A. Well, what it's saying is that, you know, 4 the software came from acquisition, and some of the 5 development has been outsourced to third-party 6 software companies. What that's saying is that some 7 of our development that we do, we used offshore 8 resources for, not all the development that we've 9 done, but some of the development. We hired a firm 10 to work in conjunction with our employees to do a 11 number of development functions for us. 12 Q. What was the name of the firm? 13 A. The name of the firm was called Net Web 14 Limited. 15 Q. With where are they located? 16 A. India. 17 Q. When did ePlus first begin working 18 with Net Web Limited? 19 A. I believe -- I believe it was early in 20 2001. This same section describes as much of the 21 internal software development as going to be handled 22 within the company, but it does point out that we've 23 externalized some of the development to this firm. 24 Q. Do you know whether or not ProcureNet 25 prior to the time it was acquired by ePlus had</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 acquired a significant part of its software from 2 third-party vendors?</p> <p>3 A. When I was there during that time that I 4 was at ProcureNet, we didn't do any acquisition, so I 5 don't know the history of the company.</p> <p>6 Q. While you were at ProcureNet, did they 7 purchase software from third-party vendors even if 8 they did not acquire those vendors?</p> <p>9 A. Well, there's software that's purchased to 10 run the operations of a company, but other than that, 11 not that I'm aware of for resale.</p> <p>12 Q. Okay. So the software used in the 13 procurement products that they were selling, who 14 developed that?</p> <p>15 A. It was the intellectual property of 16 ProcureNet as far as I know.</p> <p>17 Q. Do you know the names of any of the people 18 who actually wrote the programs?</p> <p>19 A. I think there were a number of people 20 involved, but they were before my time.</p> <p>21 Q. At the time ePlus settled with SAP in 22 December of '06, did ePlus consider SAP to be one of 23 its primary e-commerce competitors?</p> <p>24 A. When we settled with SAP?</p> <p>25 Q. Right.</p>	<p>165</p> <p>1 A. I don't believe so.</p> <p>2 Q. Why hasn't ePlus done an analysis like 3 that?</p> <p>4 A. I don't know that the analysis is 5 necessary. The solutions are an integral component 6 to our strategy as a company and integral to the 7 sales and offerings to our customers in the other 8 divisions of the company, so we're very committed to 9 the solution and very committed to drive revenue in 10 other areas of our business through the use of this 11 technology.</p> <p>12 Q. Has ePlus ever given consideration to 13 shutting down the electronic procurement software 14 portion of the company or selling it off?</p> <p>15 A. Not that I've been informed of.</p> <p>16 Q. Has there been any consideration of -- as 17 to whether or not e-procurement software could be 18 obtained by outside third parties from ePlus and 19 supply the ePlus customer needs through products 20 outside of ePlus?</p> <p>21 A. No. That wouldn't -- that wouldn't be 22 appropriate for ePlus to do that, because of, you 23 know, our ability to have control over continuing to 24 enhance the solutions, to grow as a company, and to 25 influence sales of other divisions of the company.</p>
<p>166</p> <p>1 A. Yes. We still considered them to be a 2 competitor.</p> <p>3 Q. Do you consider them to be among your top 4 5 competitors?</p> <p>5 A. Yeah, I believe so.</p> <p>6 Q. Was that true in December of '06 when you 7 settled with them?</p> <p>8 A. I believe so.</p> <p>9 Q. You understand one of the categories for 10 today's deposition relates to the effect of ePlus's 11 sales of its electronic procurement software on the 12 sales and profits of any other ePlus product or 13 service?</p> <p>14 A. I do, yes.</p> <p>15 Q. Has ePlus performed any sort of a written 16 or recorded analysis of the effect of its sales of 17 its electronic procurement software on the sales 18 of -- and profits on other products?</p> <p>19 A. In terms of a formal analysis, no, I don't 20 believe we have.</p> <p>21 Q. Has anybody by or at or on behalf of ePlus 22 done any informal analysis that they put on paper or 23 somehow recorded regarding the effect of ePlus's 24 sales of its electronic procurement software on the 25 sales and profit of its other products and services?</p>	<p>168</p> <p>1 We could not do that with third-party software. It 2 would have to be our own intellectual property.</p> <p>3 Q. Does the electronic procurement software 4 business have its own profitability reports at ePlus?</p> <p>5 A. We have our own monitoring of just the 6 procurement business unassociated with the other 7 businesses.</p> <p>8 Q. And what is that business unit called?</p> <p>9 Q. you're in charge of the business unit. I 10 forget the name of the business unit.</p> <p>11 A. EPlus systems.</p> <p>12 Q. EPlus systems.</p> <p>13 So that's the e-procurement software?</p> <p>14 A. That's correct.</p> <p>15 Q. Is ePlus systems' profitability as a 16 business unit determined on a periodic basis?</p> <p>17 A. It's looked at on a quarterly and annual 18 basis.</p> <p>19 Q. How is its profitability determined?</p> <p>20 A. It's determined just strictly on the sale 21 of procurement software, services, and maintenance 22 associated with the product that have no connection 23 to any other area of our business where we may be 24 utilizing that software to drive other sales in the 25 company.</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 Q. Why is it, then, for purposes of assessing 2 the profitability of your ePlus systems division, it 3 is strictly based on this, the outright sales of 4 software and the related services rather than 5 incorporating anything involving any of the other 6 parts of the business?</p> <p>7 A. Because determining the effect of 8 profitability in other areas of the business -- I 9 don't even want to call it an art or a science. When 10 you're selling a license for procurement, you're 11 company ABC, and I sell you procurement, it's very 12 easy to look at your expenses, your SG and A, it's 13 the sale of the license, the subscription, the 14 maintenance, the services that go along with it.</p> <p>15 Okay?</p> <p>16 Very clean, very easy to do from an 17 accounting standpoint. You have another subset of 18 clients -- and that's what's in the ePlus systems P 19 and L, if you will. Okay?</p> <p>20 You have another class of customers, 21 let's -- for example that use our software. And one 22 of the reasons that they do business with ePlus is 23 because of that software. So you have customers 24 engaged with us in leasing and fulfillment but are 25 using what you know as Procure Plus.</p>	<p>1 with accounting firms, because of all the unfortunate 2 things that have happened in years gone past with 3 accounting companies and other companies 4 misrepresenting revenues, accounting companies today 5 don't tell you what to do to solve a problem. You 6 continue to present things to them, and they'll tell 7 if you if it's right on wrong, but they won't give 8 you the advice and say, do it this way, because that 9 creates too much of a liability on their behalf.</p> <p>10 But the exercise quite honestly of doing 11 it, you know, as a company, we're considered to be 12 very cognisant of our top-line, bottom-line revenues 13 and our shareholders, and it's the total revenue with 14 the company and the total profitability of the 15 company that ePlus and the board is most concerned 16 about versus, you know, the business unit level, you 17 know, of systems as an example, which is a smaller 18 piece of the overall company, but at the same point 19 contributes to it, with all the things that we have 20 on our plate, it wasn't the most important thing to 21 beef up those numbers just to make them look good.</p> <p>22 We're more concerned with the top- and 23 bottom-line numbers of the company as a whole.</p> <p>24 Q. When you asked the accountants whether 25 there was a way to account for additional sales and</p>
<p>1 We're providing fulfillment services.</p> <p>2 We're providing leasing services. And all those 3 procurement transactions of all the things that 4 they're buying from ePlus is going through our 5 Procure Plus tool.</p> <p>6 We didn't license it to them. It was an 7 inhibitor for them to do business with ePlus to 8 create additional value in our other business units.</p> <p>9 We have discussed in the past of taking a percentage 10 of margin or gross sales and applying that back to 11 the systems group, because the numbers obviously 12 would look much better than what they do on paper 13 today, but again it's not a science. It's not an 14 accounting science that we have been able to say, 15 this is the ratio of how much business, you know, 16 we've been able to influence as a result of this.</p> <p>17 However, the application has contributed to a 18 significant amount of opportunity within the other 19 divisions of the company.</p> <p>20 Q. Have you or others at ePlus consulted with 21 your accountants as to whether there's a way within 22 generally accepted accounting principles to allocate 23 additional revenue to your business now?</p> <p>24 A. I've asked that question.</p> <p>25 The unfortunate part when you're dealing</p>	<p>170 172</p> <p>1 allocate those to ePlus systems, what did the 2 accountants tell you?</p> <p>3 A. I don't believe we had a detailed 4 discussion with them on that subject.</p> <p>5 Q. Did you have a general discussion with 6 them?</p> <p>7 A. No, not to my knowledge.</p> <p>8 Q. I thought you had indicated you'd asked 9 the question.</p> <p>10 A. No. Internally we've talked about, should 11 we do this, is it worth doing. At the end of the 12 day, people are looking at the top- and bottom-line 13 numbers. That's what they're most concerned about.</p> <p>14 So we -- with everything on you are plate, it's not 15 something that we concentrated on as having the 16 importance compared to other things we were doing.</p> <p>17 Q. So for ePlus systems, you indicated the 18 revenues that are allocated to your division.</p> <p>19 A. M-hm.</p> <p>20 Q. How -- or what costs are allocated to your 21 division?</p> <p>22 A. The costs are specific to the people that 23 are within that -- within that organization that are 24 supporting our procurement customers, those that are 25 not using anything other service from ePlus other</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 than the procurement.</p> <p>2 Q. Do people outside of ePlus systems help to</p> <p>3 market the software of ePlus systems?</p> <p>4 A. They do.</p> <p>5 Q. Are there costs allocated to your</p> <p>6 division?</p> <p>7 A. Those that are out there talking about the</p> <p>8 solution or --</p> <p>9 Q. And marketing it.</p> <p>10 A. Well, the marketing is within my</p> <p>11 organization of that solution. I also consider</p> <p>12 marketing to be salespeople that are out there</p> <p>13 talking. There are salespeople that will talk about</p> <p>14 our solution that costs are not allocated to my</p> <p>15 group, because they're driving revenue by the use of</p> <p>16 our software in their own groups, and that's their</p> <p>17 motivation.</p> <p>18 Q. Is the ePlus systems group or division</p> <p>19 currently profitable?</p> <p>20 A. No.</p> <p>21 Q. Has it ever been profitable?</p> <p>22 A. No.</p> <p>23 MR. McDONALD: Why don't we take a quick</p> <p>24 break here.</p> <p>25 THE WITNESS: Sure.</p>	<p>173</p> <p>1 A. I'm not sure about as early as 2001 if it</p> <p>2 was broken out as it is today, but it has been for a</p> <p>3 while.</p> <p>4 Q. Okay. With respect to the license</p> <p>5 agreement that you entered with SciQuest, did you</p> <p>6 think that the compensation to ePlus was reasonable?</p> <p>7 A. It's not the way I personally would have</p> <p>8 gone about formulating the agreement, so reasonable</p> <p>9 would be in the eye of the person doing the</p> <p>10 negotiation.</p> <p>11 Q. Ultimately, the CEO of ePlus approved the</p> <p>12 dollar figure?</p> <p>13 A. Yes, he did.</p> <p>14 Q. Okay. So at least from the corporate</p> <p>15 standpoint, though, does ePlus -- I understand how it</p> <p>16 may not be your personal opinion, but as the</p> <p>17 representative of the company, was the compensation</p> <p>18 to ePlus under the SciQuest license reasonable?</p> <p>19 A. I fully support my CEO.</p> <p>20 Q. Do you have an understanding of what</p> <p>21 SciQuest actually sells?</p> <p>22 A. I have I think a fairly good</p> <p>23 understanding.</p> <p>24 Q. What do they sell?</p> <p>25 A. They sell procurement software. They sell</p>
<p>1 THE VIDEOGRAPHER: We're going off the</p> <p>2 record. The time is 2:55 PM.</p> <p>3 (Recess.)</p> <p>4 THE VIDEOGRAPHER: We're now back on the</p> <p>5 record. The time is 3:06 PM. You may proceed.</p> <p>6 BY MR. McDONALD:</p> <p>7 Q. Mr. Farber, I already asked this off the</p> <p>8 forward from your counsel, but I'll go ahead and ask</p> <p>9 you on the record here.</p> <p>10 Do you know whether or not any of these</p> <p>11 quarterly profitability reports specific to your</p> <p>12 ePlus systems division have been produced in the case</p> <p>13 as documents?</p> <p>14 A. I believe financials have been provided,</p> <p>15 yes.</p> <p>16 Q. Financials specific to your division?</p> <p>17 A. Yes.</p> <p>18 Q. I just wasn't sure of that, so I've asked</p> <p>19 for it in this case, but we'll check on that. I</p> <p>20 appreciate it.</p> <p>21 Such records do still exist though as far</p> <p>22 as you know?</p> <p>23 A. I believe so.</p> <p>24 Q. Do they go back all the way to 2001 when</p> <p>25 you joined the company?</p>	<p>174</p> <p>176</p> <p>1 software for what's referred to as spend management.</p> <p>2 Q. You had talked about them earlier along</p> <p>3 with GHX, and I'm trying to remember what product</p> <p>4 line that was.</p> <p>5 Is that one of these, or is that something</p> <p>6 different?</p> <p>7 A. No. That's a separate company that I</p> <p>8 believe Lawson had some association with.</p> <p>9 Q. I think it came up when you talked about</p> <p>10 Lawson and SciQuest having some sort of a</p> <p>11 partnership.</p> <p>12 A. Yes.</p> <p>13 Q. Do you know whether at least in the past</p> <p>14 Lawson and SciQuest had some sort of a partnership?</p> <p>15 A. I think there was an announced partnership</p> <p>16 between Lawson and SciQuest where Lawson was</p> <p>17 providing best of my recollection the procurement</p> <p>18 software. SciQuest was providing the catalog for the</p> <p>19 health care industry.</p> <p>20 Q. So in addition to providing procurement</p> <p>21 software and spend management software, does SciQuest</p> <p>22 offer a catalog specific to the health care industry?</p> <p>23 A. Yes.</p> <p>24 Q. Do they have any catalog specific to other</p> <p>25 industries?</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 A. Not that they provide. They provide tools 2 to customers so that customers can create catalogs. 3 Q. But for the health care industry, SciQuest 4 actually created its own catalog? 5 A. Yes. I believe they have a catalog of 6 numerous -- numerous SKUs or product information as 7 it relates to the health care industry. 8 Q. Is the SciQuest catalog -- is that -- does 9 that have catalogs from a number of vendors or 10 suppliers of health care products? 11 A. I believe it would. 12 Q. Do you know whether or not it actually is 13 searchable according to vendor? 14 A. I wasn't part of any of the discovery, so 15 I never got to that detail. 16 Q. Does ePlus consider the compensation it 17 received under the Perfect Commerce license agreement 18 to be reasonable? 19 A. Based on what we found out about Perfect 20 Commerce, I think, yes. 21 Q. That was a lump sum settlement; is that 22 right? 23 A. Yes, I believe that's correct. 24 Q. Did you try to calculate the lump sum in 25 terms of equivalent percentage royalty?</p>	<p>177</p> <p>1 had other businesses too that did not fall within the 2 context of these patents. 3 Q. Did you make any effort to calculate the 4 SciQuest lump sum settlement in terms of an 5 equivalent royalty percentage? 6 A. SciQuest or Perfect Commerce? 7 Q. SciQuest. I jumped back to SciQuest 8 again. 9 A. No. You know, again, I mean, I didn't 10 have anything to correlate. I didn't know what their 11 financials were. I didn't know -- you know, I didn't 12 have any information to make any type of assessment, 13 determination to even go back to our counsel to say, 14 you know, is this appropriate, not appropriate. 15 Q. With respect to Verian, did the company 16 consider the amount of money it got for the Verian 17 license to be reasonable? 18 A. Yeah. I think that would be accurate. 19 Q. What does Verian sell? 20 A. Again, Verian sells procurement-related 21 software, tools to populate catalogs. I believe they 22 also have a spend analysis or analytics product. 23 They may also have an expense management product and 24 a contract management product if I'm not mistaken. 25 Q. Do you know how long Verian has been in</p>
<p>1 A. No. We physically did an audit of Perfect 2 Commerce, because we had a very difficult time 3 understanding what are their revenue really was on 4 the accused products that we were claiming, or at 5 least what we thought was potentially infringing our 6 patents, and found that -- let's just say what we 7 found that they said publicly or stated publicly 8 versus what was reality were 2 different things. And 9 the revenues were very, very low. 10 Q. But you didn't actually ever calculate the 11 lump sum settlement in terms of an equivalent 12 expected royalty? 13 A. No. Based on the information of what we 14 found out as it related to what their revenue was in 15 their model and the assets that they had, et cetera, 16 in conferring with our general counsel, it's the 17 number that we came up with that was -- appeared to 18 be acceptable based on their financial condition. 19 Q. Do you have an understanding of what 20 Perfect Commerce sells? 21 A. Yes. 22 Q. What do they sell? 23 A. Perfect Commerce sold procurement 24 solution, and they also provided tools for customers 25 to load supplier information into catalogs. And they</p>	<p>178</p> <p>1 business? 2 A. I should know that. I don't recall off 3 the top of my head. I did know at the time of the 4 settlement. 5 Q. Do you know whether it was more or less 6 than 10 years? 7 A. Yeah. I think -- I believe it was more 8 than 10 years. 9 Q. How long has Perfect Commerce been in 10 business? 11 A. I think they were in business probably 12 within the 10-year window as well. 13 Q. For less than 10 years or more? 14 A. I don't know. 15 Q. How long has SciQuest been in business? 16 A. I guess around the same time, but I 17 couldn't tell you exactly when they incorporated. 18 Late '90s, maybe. 19 Q. Were you involved at all in the efforts in 20 this lawsuit to gather up documents for production? 21 A. Gather up documents as it relates to what? 22 Q. For discovery purposes to produce. 23 A. Oh, yes, I was. 24 Q. What was your role in that? 25 A. Well, in the -- my role was working with</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 our external counsel as well as our internal counsel 2 and the management to abide by the discovery efforts 3 of document retention as well as, you know, providing 4 them the necessary documents to our legal counsel. 5 We went through an extensive exercise internally to 6 identify all the things that were needed as it 7 related to this litigation, named custodians in terms 8 of who we believed to be the best people to have 9 access to all this information, whether it was in 10 internal databases, on the Website, on people's 11 laptops, you know, any system that we had from all 12 the various groups, individuals within ePlus. 13 And then I connected all those individuals 14 with our counsel, had the counsel arrange phone calls 15 with each of those individuals, everybody from the IT 16 department to the business head owners, product 17 managers, et cetera, to collect all that information, 18 which subsequently, you know, was collected. I think 19 there was something from what I heard like a million 20 some-odd documents produced as a result of those 21 efforts. 22 Q. About how many custodians did you 23 identify? 24 A. Oh, my gosh, I think there were probably 6 25 to 8 primary custodians.</p>	<p>181</p> <p>1 type of documents, whether it was directly within 2 ePlus systems or ePlus technology, which is another 3 division of the company, so we spanned the entire 4 company. There's 35 primary office locations across 5 the country. There's computer systems that we have 6 that are centralized. There's some that you don't 7 have control of. You don't know what's on people's 8 laptops. 9 But we did go out and, you know, to seek 10 information off of those personal laptops, as well as 11 you have to consider hard copy as well, the files 12 that may be sitting in an office location and may not 13 be electronic, because there's no telling, you know, 14 what information was out there, so we wanted to cover 15 all the bases. 16 Q. Were the documents gathered up -- were 17 they managed through any content management systems 18 provided by ePlus? 19 A. Are you interested in buying one? 20 (Laughing.) 21 No. We don't do that. 22 Q. You don't do litigation documents? 23 A. Although I understand that it's quite a 24 lucrative business. 25 No. We did -- our counsel gave us search</p>	<p>183</p>
<p>1 Q. Were there some other secondary custodians 2 that you -- 3 A. Another bad choice of words, m-m-m? 4 Q. Eventually you realize that's going to be 5 the followup question. 6 A. That's right. That's right. 7 (Gesturing) -- rewind the tape. 8 No, actually, there wouldn't be secondary 9 custodians. 10 Q. I think Structured Computer Systems -- 11 were they the ones located in Avon, Connecticut? 12 A. I guess there might have been some people 13 in other locations too. 14 Q. Does ePlus still have employees in Avon, 15 Connecticut? 16 A. We do have an office in Avon, yes. 17 Q. Did you direct counsel to look for any 18 documents in Avon, Connecticut, that might be 19 relevant to the case? 20 A. Absolutely. 21 Q. About how many different cities is ePlus 22 located in in terms of having facilities that might 23 have documents in them. 24 A. Well, I mean, we looked at ePlus all over 25 the company, because there's no telling who had what</p>	<p>182</p> <p>184</p> <p>1 criteria or gave our IT folks search criteria. A 2 letter went out to the company from our counsel as 3 well that was constructed with our outside counsel to 4 the entire company, one to search for information 5 based on this, you know, relevant information that we 6 were provided, and the other is, you know, do not 7 destroy any information either, obviously. 8 So, you know, based on that information, 9 we put it on disks or files when they were on paper, 10 shipped it all off to the legal firm, Goodwin, and 11 let them process it. 12 Q. So among the words you searched for was 13 "Lawson." 14 Right? 15 A. Yeah. There was a criteria that we were 16 provided, you know, a time frame and a criteria of 17 information relevant to this, and it wasn't just 18 Lawson. I think that started with SciQuest, Perfect 19 Commerce, Verian, who was a much more expanded 20 search. 21 Q. Okay. That's that for that topic. I 22 basically have just one last topic for you. 23 A. Okay. 24 Q. Has ePlus ever commissioned any studies to 25 determine specifically whether or not ePlus's</p>	

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 procurement software products saved them money 2 compared to other products? 3 A. There was -- you mean for our customers? 4 Q. Right. 5 A. Okay. Yes. 6 There was one study that we did commission 7 through -- I believe it was Aberdeen Research that we 8 asked to write a paper and do an analysis on price 9 cost management and potentially what savings clients 10 or prospects the average company could derive from 11 procurement solutions. 12 Q. And that resulted in a report by Aberdeen? 13 A. Correct. 14 Q. How much did ePlus pay for that report? 15 A. I think those reports -- industry reports 16 at the time tend to run somewhere -- you know, they 17 can run 5,000 to 20,000. I think we paid somewhere 18 between 5 and 10,000 to have them run the reports -- 19 write the report. 20 Q. Has ePlus ever done or commissioned any 21 reports that compare ePlus procurement products 22 versus competitor procurement products? 23 A. No. We've never to my knowledge have gone 24 out and asked a third party to do that analysis. I 25 think there's enough analysis by outside sources not</p>	<p>185</p> <p>1 the wire boasting their functionality of a new 2 system. Those are different things that you use to 3 put the pieces together if you will, if you're 4 interested in doing. 5 But when I talk about the intellectual 6 property or the property of a company, it's very rare 7 that if at all that you would see a company such as 8 Lawson or such as ePlus or such as SAP for that 9 matter publishing every single feature and function 10 that they have about their system in an open public 11 document. They're usually marked confidential and 12 they're usually licensed users to get that specific 13 information or done under a nondisclosure. 14 So -- and for us, it's -- you know, we do 15 the same. There's a lot of information that we don't 16 publicize, because as we talked about early, the 17 procurement solutions are -- you know, have some 18 intrinsic value into the fabric of ePlus as a whole 19 and how we drive revenues as a whole, you know, of 20 the company. 21 Q. Are you aware of any reports done by 22 Aberdeen or these other research companies that 23 actually put 2 procurement products head to head? 24 A. None that I have seen or recall seeing 25 that kind of do what used to be called years ago a</p>	<p>187</p>
<p>1 to do comparisons but just talk about the 2 functionality of systems and generally what they do. 3 Q. And those reports are more general about 4 having electronic procurement rather than ePlus's 5 specific procurement product as opposed to a 6 competitor's product. 7 Right? 8 A. Yeah. The only way we generally find out 9 very specific information about a competitor's 10 product is that -- you know, and it happens very, 11 very infrequently is when you have a prospect that's 12 saying, well, company XYZ is saying they have this, 13 do you guys have that. 14 So, you know -- so it's very difficult 15 information to ascertain, because it's the 16 intellectual property of, you know -- of a 17 competitor, so they generally don't put that 18 information out and they hold it pretty tight. 19 Q. What information are you saying is 20 intellectual property that would make it hard to do 21 this study? 22 A. Well, you know, you can find information 23 out over the Web, as an example. Sometimes you get 24 blurbs of information from an analyst report or 25 through a press release that a vendor may put out on</p>	<p>186</p> <p>188</p> <p>1 bakeoff of products. You don't see it. You don't 2 really get a lot of vendors that want to participate 3 in that because they don't want that information 4 public. 5 Q. Does Oracle have an e-procurement product? 6 A. Yes, they do. 7 Q. Do you have any understanding as to 8 whether it's got any differences from a functional 9 standpoint from ePlus's procurement product? 10 A. Very little. I mean, we have not done an 11 analysis, a detailed analysis to make that 12 determination on how it relates directly. I mean, at 13 a high level, you could say it's procurement. At a 14 high level, you know, you could make assumptions, but 15 diving into the analysis very deeply, I don't know 16 that we've done that or that I can recall other than 17 maybe at a very high level. 18 Q. Do you have any reason to believe that 19 Oracle sells any products that infringe the patents 20 involved in this lawsuit? 21 A. They could. They very well could. I 22 mean, we -- you know, we compete, you know, just as 23 we've competed with Lawson, we've competed with 24 Oracle, and many, many other players in the industry. 25 It's a matter of, you know, how frequently are you</p>	

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

	<p>189</p> <p>1 running up against these folks and how much time and 2 money do you have as a company to pursue them, and 3 earlier we spoke -- not today, but prior months 4 about, you know, ePlus, you know, is an okay-sized 5 company but doesn't have unlimited resources to be 6 able to take everybody on, you know, at one time. 7 And that's certainly not our intentions, but, you 8 know, we really haven't gotten to the level of doing 9 as I understand what needs to be done, some kind of a 10 claim construction, evaluation, you know, are they 11 infringing, are they not infringing. I don't want to 12 launch into anything frivolous because of the expense 13 in doing so without having that knowledge and firm 14 belief.</p> <p>15 Q. Has ePlus internally apart from 16 discussions with lawyers ever made a decision that 17 they wanted the lawyers to analyze whether or not 18 Oracle infringes the patents-in-suit?</p> <p>19 MR. STRAPP: Objection, beyond the scope.</p> <p>20 A. We haven't asked our lawyers to do that.</p> <p>21 BY MR. McDONALD:</p> <p>22 Q. Have you had any communications with 23 Oracle about licensing the patents-in-suit?</p> <p>24 A. No.</p> <p>25 Q. Have you had any communications with any</p>	<p>191</p> <p>1 interest that if we decide to file a complaint with 2 the courts that it doesn't get to the level of 3 litigation, that both parties would be able to sit 4 down and reasonably have a discussion of settlement. 5 Unfortunately, it hasn't happened thus far in this 6 case, as it had with the 3 other litigants, but 7 that's our true hope and desire, not to go to a 8 trial.</p> <p>9 Q. My question is a different question.</p> <p>10 My question is, has ePlus made a 11 decision to not communicate with third parties about 12 licensing the patents-in-suit until after they've 13 sued them?</p> <p>14 A. I think I answered that. You know, 15 I said that, you know, it's kind of our hope 16 that after a complaint is filed, and that's the 17 protocol that we follow as a company, is, we 18 file a complaint with the courts and then 19 hope to have communication, you know, that 20 would lead to a license agreement.</p> <p>21 MR. McDONALD: I have no further 22 questions.</p> <p>23 Thank you.</p> <p>24 MR. STRAPP: I have no questions.</p> <p>25 THE VIDEOGRAPHER: This ends the</p>
	<p>190</p> <p>1 other parties whether or not you entered a license? 2 I mean, have you discussed the possibility 3 of licensing with any entities other than entities 4 you've sued?</p> <p>5 A. My understanding -- well, let me say no 6 and tell you that my understanding is that that's not 7 the most wise thing to do, because as I've been 8 informed, you can expose yourself to countersuits. 9 So generally speaking, you know, we have learned or 10 at least been informed that one of the methods is not 11 to expose yourself.</p> <p>12 MR. STRAPP: Before you go any further, to 13 the extent that this information that you're relaying 14 to Mr. McDonald comes from advice of counsel, I'll 15 instruct you not to relay it. To the extent you know 16 this on your own, go ahead, but if this is from your 17 attorneys, then I would instruct you not to go any 18 further.</p> <p>19 A. Can't go any further.</p> <p>20 BY MR. McDONALD:</p> <p>21 Q. Okay. ePlus has made a business decision, 22 though, that it will not communicate with other 23 parties about licensing before there's a lawsuit; is 24 that right?</p> <p>25 A. I'll tell you that it's our hope and</p>	<p>192</p> <p>1 deposition of Mr. Kenneth Farber. The time is now 2 3:29 PM. There were 4 tapes used.</p> <p>3 Thank you.</p> <p>4 (Whereupon, at 3:29 p.m., the taking of 5 the instant deposition ceased.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Farber - 30(b)(6), Kenneth Gary 5/18/2010 12:00:00 PM

<p>1 CERTIFICATE OF DEPONENT</p> <p>2 I hereby certify that I have read and examined the</p> <p>3 foregoing transcript, and the same is a true and</p> <p>4 accurate record of the testimony given by me.</p> <p>5 Any additions or corrections that I feel are</p> <p>6 necessary, I will attach on a separate sheet of</p> <p>7 paper to the original transcript.</p> <p>8</p> <p>9</p> <p>10</p> <hr/> <p>11 Signature of Deponent</p> <p>12</p> <p>13 I hereby certify that the individual representing</p> <p>14 himself/herself to be the above-named individual,</p> <p>15 appeared before me this _____ day of _____,</p> <p>16 2010, and executed the above certificate in my</p> <p>17 presence.</p> <p>18</p> <p>19</p> <p>20</p> <hr/> <p>21 NOTARY PUBLIC IN AND FOR</p> <p>22</p> <p>23</p> <hr/> <p>24 County Name</p> <p>25 MY COMMISSION EXPIRES:</p>	<p>193</p> <p>194</p>
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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of August, 2010, I will electronically file the foregoing

**PLAINTIFF *e*PLUS'S OBJECTIONS TO DEFENDANT'S DEPOSITION
DESIGNATIONS AND SUMMARY OF THE DEPOSITION OF KENNETH FARBER
AND COUNTER-DESIGNATIONS**

with the Clerk of Court using the CM/ECF system which will then send a notification of such filing (NEF) via email to the following:

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